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THE
JUSTICE of the PEACE,
AND
PARISH OFFICER.

By RICHARD BURN, LL.D.
LATE CHANCELLOR OF THE DIOCESE OF CARLISLE,

THE TWENTY-FIRST EDITION:
With many CORRECTIONS, ADDITIONS, and IMPROVEMENTS,
By the late CHARLES DURNFORD, Esq.

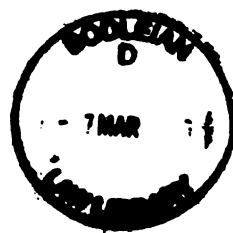
~~DECEASED~~ AT LAW.
AND CONTINUED
By JOHN KING, of the Inner Temple, Esq.
BARRISTER AT LAW.

The CASES brought down to the End of last EASTER Term;
And the STATUTES to the End of the last Session of Parliament,
50 GEORGE III. (1810.)

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OF this extensive title it is proposed to treat in the following order; viz.

- Se&t. I. *Of overseers.*
- II. *Of poor rate.*
- III. *Of relief.*
- IV. *Of overseers' account.*
- V. *Penalties.*
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- VII. *By Birth.*
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- XVIII. — *Removal unappealed against.*

XIX. *Of removals; and herein, of casual poor.*

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- 1. *For what places overseers may be.*
- 2. *What is a vill.*
- 3. *What number may be appointed.*
- 4. *Who may be appointed.*
- 5. *At what time, and by whom nominated.*
- 6. *Of the 13 & 14 C.2.*
- 7. *Of the Appeal.*
- 8. *Of the overseers duties in general.*

1. *For what places overseers may be.*

Anciently, the maintenance of the poor was chiefly an ecclesiastical concern. A fourth part of the tithes in every parish was set apart for that purpose. The minister under the bishop, had the principal direction in the disposal thereof, assisted by the churchwardens and other principal inhabitants. Hence naturally became established the parochial settlement. Afterwards, when the tithes of many of the parishes became appropriated to the monasteries, those societies had some share likewise (by reason of the said tithes, and other donations for that purpose) in the relief of the poor. And the rest was made up by voluntary contributions. But, though the relief of the poor was in a great degree an ecclesiastical concern, it is not true (as some people have imagined) that the common law of England made no provision for the poor; the *Mirror* shews the contrary; how it was done, indeed, does not appear. (1 *Bur.* 450.)—By the statute of the 27 *H. 8. c. 25.* The churchwardens or two other of every parish were to make collections for the poor on Sundays. — By the 5 & 6 *Ed. 6. c. 2.* The minister and churchwardens were annually to appoint two able persons or more to be gatherers and collectors of alms for the poor. — By the 5 *El. c. 3.* The parishioners were to chuse the said collectors and gatherers for the poor. — By the 14 *El. c. 5.* The justices were to appoint collectors for the poor within every parish; and were also to appoint the Overseer of the poor, whose office was nearly the same as it is at present, except only for collecting the money, which was done by the aforesaid gatherers or collectors. — By the 18 *El. c. 3.* The justices were to appoint collectors and Governors of the poor. — By the 39 *El. c. 3.* The churchwardens of every parish, and four substantial householders there, being subsidy men, or for want of subsidy men, four other substantial householders, to be nominated yearly in Easter week by two justices (1 *Q.*) were to be called overseers of the poor of the same parish. — And so it continues with some small variation, by the statute of the 43 *El. c. 2.* which is the great constitution of the system of law concerning the poor, (*K. v. Loxdale, post.*) and is as follows:

Statutes concerning the appointment of overseers.

The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the same parish.

parish or division where the same parish doth lie, shall be called overseers of the poor of the same parish. 43 El. c. 2. s. 1.

And by the 13 & 14 C. 2. c. 12. Whereas the inhabitants of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, the bishopric of Durham, Cumberland, and Westmorland, and many other Counties in England and Wales by reason of the largeness of the parishes within the same, have not nor cannot reap the benefit of the said act of the 43 El. it is enacted, that all and every the poor, needy, impotent, and lame persons, within every township or village within the several counties aforesaid, shall from the passing of this act be maintained, provided for, and set on work, within the several and respective townships and villages, wherein they shall inhabit, or wherein they were last lawfully settled; and there shall be yearly chosen and appointed two or more overseers, within every of the said townships or villages respectively, in manner as is by the said act of El. directed, and liable to the same duties. s. 21.

And by the 17 G. 2. c. 38. In every township or place where there are no churchwardens, the overseers alone may act in all respects as churchwardens and overseers may do in other places by virtue of this or any former act. s. 15.

And if any overseer shall die, or remove, or become insolvent, before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. s. 3.

And if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5l. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions. 43 El. c. 2. s. 10.

The churchwardens] These (as is above observed) were overseers of the poor long before this statute of the 43 El. And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such, and requires others to be added to them by the nomination of the justices.

Every churchwarden is also an overseer.

Of every parish] In *R. v. Severn and Arnold*, T. 29 & 30 G. 2. two justices appointed *Severn and Arnold*, substantial householders in the precinct of the Tower within, otherwise called the parish of *St. Peter ad vincula*, to be overseers of the poor of the said precinct. It was objected, that this appointment is not warranted by the statute, which requires that the churchwardens of every parish, and four, three, or two substantial householders there, shall be appointed overseers of the poor of the same parish. *Denison J.* delivered the resolution of the Court (*Ryder Ch. J.* being dead, but concurring with the other justices before his death): This is not a

Must be a parish, township, or vill, not a precinct.

Parish or vill
by reputation
may be good.

good appointment under the 43 *El. c. 2.* which requires them to be appointed within a *parish*; neither is it good within the statute of 13 & 14 *C. 2. c. 12.* which says, that there shall be yearly appointed two or more overseers within every *township* and *village* respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it were a parish or vill by *reputation*, it might have been good (*Cro. Car. 92, 394.*); but the Court cannot intend this precinct to be a vill, and the words of the statute ought to be pursued. Neither will the words *otherwise called the parish of St. Peter ad vincula*, aid the want of this in the appointment: for in all constructions of *alias diē.* the words that go before the *alias diē.* must be presumed to be true; as in an indictment, the addition of the party not coming till after the *alias diē.* will vitiate the indictment, for what precedes the *alias diē.* is the true and proper appellation (3 *Bulst. 296*). If in this case the *alias diē.* had come after the parish of *St. Peter*, it would have done. And the appointment was qualified. *M. S. Sayes's R. 278. 1 Bott. 4. pl. 13.*

But the township or vill may be extraparochial.

E. 8 G. K. v. I. of Rufford. A *mandamus* was directed to the justices of the peace of the county of *Nottingham*, reciting that within the vill of *Rufford*, in the forest of *Sherwood*, there are divers substantial freeholders, able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overseers. They return that the vill of *Rufford* is part of no parish, but time out of mind has been extraparochial, without church, chapel, or parochial rites, and that there never have been any overseers of the poor; and for that cause they cannot appoint. After argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed in parishes, were by the 13 & 14 *C. 2.* extended to all townships and villages, whether parochial or extraparochial: that although most of the forests in *England* are extraparochial, yet notwithstanding they ought to maintain their own poor, and consequently overseers might be appointed; for which purpose in this case a peremptory *mandamus* was awarded. *1 Str. 512. 1 Bott. 36. pl. 58.*

Not material whether the township or village be within a parish or not.

For the statute directeth overseers to be appointed within the several townships and villages within the several *counties* without saying, within the several *parishes* in the said counties; so that if it be a township or village, and such township or village is within the *county*, it seemeth not to be material whether it be within any *parish* or not.

And

And if a place be found by the sessions to be a vill, the appointment of separate overseers is of course. *R. v. Ranton Abbey.* 2 T. R. 207. 1 Bott. 56. pl. 73.

2. What is a Vill?

In *R. v. Denham*, E. 8 G. 2. It was held that a single house or two houses cannot amount to the notion of a town or village, and that if it had been formerly a town or village, if the houses were in fact decayed and gone, it would cease to be a town or village. What is a township or vill.

Lee J. observed that the notion of a village, according to the ancient law, is a tithing consisting of ten families, that according to the modern notion it is a place that has a constable; that it ought to have at least the reputation of a town or vill. 1 Bott. 37. pl. 59.

The like was said to have been adjudged in *R. v. Belvoir*. M. 2 G. 2.

Wherever there is a constable there is a township. *Peart. v. Westgarth.* 1 Bott. 54. pl. 72. *Buller J.* Where there is a constable.

But a township or village it must be. In *R. v. Denham*, E. 8 G. 2. The question was, whether *Southwold* park, being an extraparochial place, and consisting of two houses, and about 300 acres of land, was such a place as was liable to maintain its own poor? By the court, it is now a settled point that the justices may appoint overseers in extraparochial places, but such place must come under the notion of a town or village. 1 Bott. 37. pl. 59. But the place must be a township or village.

So in *R. v. Welbeck*. M. 14 G. 2. It was held that the court could only send a writ of *mandamus*, commanding the appointment of overseers to a township or village, or a place reputed as such; and if a *mandamus* be sent to an extraparochial place not being either, it is sufficient to return that it is not a vill; and the fact of there being *substantial householders* is immaterial, if it appear not to be a vill. 2 Str. 1143. 1 Bott. 38. pl. 61.

So also a place in a parish must be a township or vill in order to have its own overseers distinct from those of the parish. *R. v. Bowler and Atter.* T. 3 G. 3. 3 Bur. 1391. 1 Bott. 41. pl. 64.

And in *R. v. J. of Bedfordshire*, E. 22 G. 3. It was holden that in order to obtain a *mandamus* to compel justices to appoint overseers of the poor, it must be expressly sworn that the place in question either is or is reputed to be a vill. *Cald.* 167. 1 Bott. 48. pl. 69. The place must either be a vill or a reputed vill.

In *R. v. Grafton*, E. 10 G. 2. The manor of *Grafton*, an extraparochial place, once consisting of a capital messuage and three keepers' lodges in the park, now disparted and consisting Five dwelling houses and farms are not a township or village to which a removal may be made.

consisting of five dwelling houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officers, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be a township or village within the statute unto which a removal might be made. It was moved to quash the orders of the justices, and a rule was made to shew cause; and afterwards the rule was made absolute, without defence. *B. S. C. 101. 2 Str. 1071. 1 Bott. 37. pl. 60.*

One capital messuage and four labourers cottages, do not constitute a vill for the purpose of having separate overseers.

So in *R. v. Showler and Atter, T. 3 G. 3.* Two justices appoint *Thomas Showler* and *John Atter* overseers of the poor of the township or village of *Haugh*. The sessions, upon appeal, confirm the appointment, and state specially, that it appears to them, that the said place called *Haugh* consists of a capital messuage, in which *Thomas Showler* in the said appointment named, with all his family, dwells; and of two small ancient cottages; and of one other small cottage lately built (all which cottages are let, along with the said capital messuage and the farm thereunto belonging, to the said *Thomas Showler*); and of another tenement part of the said capital messuage; and all of them inhabited by families; and that one of the cottages is inhabited by the said *John Atter*, who is a day-labourer, and his family; and another of the said cottages is inhabited by another day-labourer and his family; and the other of the said cottages is inhabited by a shepherd and his family; and the tenement, part of the said capital messuage, is inhabited by a poor widow and her five children: All which occupiers of the said cottages, and of the said tenement part of the said capital messuage, are under-tenants to the said *Thomas Showler*.—It was moved to quash these orders, for that the facts stated shew that this place is neither a township nor a village.—And the court were clearly and unanimously of opinion, that both these orders ought to be discharged.—*L. Mansfield* observed, that by this method a place might be made into a village, which in fact was not so; and the inhabitants of it might by this contrivance withdraw themselves from contributing towards the support of the poor of their parish. *3 Bur. 1391. 1 Bott. 41. pl. 64.*

The site of a cathedral and its area, do not constitute a vill, though there be many houses, &c. upon it.

In *R. v. J. of Peterborough, H. 23 G. 3.* on shewing cause against a rule which had been obtained for a mandamus, to require the appointment of overseers of the poor, for a certain vill or township called *Peterborough Minster*, it appeared that it was an extraparochial place, containing upwards of 60 acres of ground, upon which were 25 dwelling houses at least, besides poor houses, of the annual value of 40l. at least; that these houses were inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or by strangers to the cathedral, and mostly

Sect. I. (2.)] (Overseers.)

mostly persons of fortune, who kept servants that acquired settlements therein. That the poor had been supported from some fund belonging to the dean and chapter; that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor or churchwarden; nor had the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do.—*L. Mansfield*. This space comprehends no more than the site of the cathedral and the area round it, and consequently was in former times within sanctuary, and as such sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary, but these places have throughout all ages without interruption enjoyed those immunities, as *Westminster Abbey* now does, and other places of the like nature. The ancient inns of court, though not exactly upon this principle, have also at all times been privileged; and a similar exemption was not questioned in a late case *R. v. Gardner*, (*post.*) with respect to that part of the court and garden ground of *Catherine Hall* in the university of *Cambridge*, which lay within the old and extraparochial part of that foundation. Would you say that *Christchurch* in *Oxford* is a vill? I am not satisfied that this place is a vill, and the party applying do not even call it so.—The other judges concurred.—Rule discharged. *Cald.* 238. 1 *Bott.* 50. pl. 70. The party applying for a mandamus must either state as a fact that the place was reputed a vill, or must state facts which upon some clear principle of law shew the place to be of that denomination. *Id. Per Buller. J.*

An order appointing overseers of the “hamlet” of *B.* in the parish of *C.* is good; for it shall be intended, that the place was a vill, unless it be stated to be otherwise; for “vill” and “hamlet” are in common acceptance used as synonymous terms. *R. v. Morris. T. R. 550. post.*

Vill and hamlet are synonymous terms.

3. What number may be appointed;

Four, three, or two.] In *R. v. Loxdale* and others, *H. 30 G. 2.* on a rule to shew cause why an appointment of five overseers for the parish of *St. Chad* in *Shrewsbury* should not be quashed, it being objected that this appointment was not warranted by the statute of the 43 *Eliz.*—By *L. Mansfield Ch. J.*: Upon reading the case of the *King v. Harman*, I find it was pressed in that case, that the usage had been for more than four overseers to be appointed; and Sir *John Strange* was instructed to argue it upon that head, on this maxim, that *communis error facit jus*. In the printed case of the *King*

Not more than four overseers can be appointed for one parish, unless it be divided into two or more divisions or townships.

* *Sess. C. 2.* 148. 1 *Bott.* 19. pl. 37.

and *Harman*, it is said, the court refused to quash the order : but this is a mistake. Being desirous to know the usage in a variety of parishes, we desired the agents to inquire what hath been the usage in the large parishes in *London* and *Westminster*, and more particularly with respect to the different parishes in *Shrewsbury*. The account that has been given us is very satisfactory, for it lays the usage out of the case, and proves it to have been the contrary way. This brings me to consider what are the authorities and judicial precedents in this case. And this seems to be quite a new and original case, on which there has never been any judicial opinion given. There never was any doubt till the case of the *King* and *Harman* ; and there the court gave no determination on the validity of the appointment, as appears by the rule, "and the court will further consider of the order." The case of the *King* and *Besland*, *H. 18 G. 2.* was very different from this ; there it was impossible to have more than *one* overseer. But there was no judicial opinion in that case, so that neither of these two cases has any determination extending to the present case. This case therefore being an original one, it must be determined on the true construction of the statute of the 43 *Eliz.* which may be called, The great constitution of the system of law concerning the poor. To incline the court to construe this act with a latitude, two other clauses have been mentioned, which have been held merely directory : One is, with respect to the time of appointing ; now the precise time is not of the essence of the thing, where third persons, and innocent ones, are affected. As in the case of the town of *Launceston*, 1 *Roll's Abr.* 513. An appointment after the time was held to be good, rather than defeat the intent of the charter, and leave the corporation destitute of a magistrate by another construction. So in the case of the *King* against *Sparrow* and others (*Str.* 1123. *post.*) where the overseers were appointed more than a month after *Easter* ; and to have said in that case, that there could not have been an appointment after the time, would be to say that there is no remedy for the neglect of the justices to appoint within the time. The other clause is, to be nominated by the justices *in or near*. This is a loose indefinite expression. If a justice live 20 miles off. if there be none nearer, he must be said to be near. It is a word of relation. I do not see how this clause could be construed otherwise. And though some part of the act should be construed to be directory, yet it cannot from thence be inferred that the whole is so. It is a rule of construction, that where persons, as justices, commissioners, or the like, have a special authority by statute, they have no power but under that statute ; and if the

Rules of construction.

The statute directory as to time.

They may be appointed after the month after Easter.

In or near are words of relation.

the thing is done otherwise, and not agreeable to the special authority, it is void. There is no room for the distinction, that there must be negative words to circumscribe the power. It was said at the bar, that if a man has a power originally, and an act of parliament gives him something less than he had before; there, without negative words, the act will not take away that which he had before. But it can never be necessary for the act to say a man shall not do what he could not do before. The meaning of the legislature was not to leave the justices an absolute discretion, but to confine their discretion not to exceed four, nor to appoint less than two. There is another rule of construction: Where there are at different times different statutes made concerning the same matter, though some of them should be expired, and not referred to by the subsequent statutes; yet being *in pari materia* they shall all be taken together, and considered as one system of that branch of positive law, and giving light to one another. This has been so determined of the disabling statutes concerning leases by ecclesiastical persons; so the statutes relating to bankrupts, some of which are temporary, are *in pari materia*, and shall be taken together. Thus all the statutes since the reformation concerning the poor I consider as a new body of positive law, and they must be taken together. By the 39 *Eliz. c. 3.* four overseers were to be appointed, and there was no latitude at all. If the question had stood upon that statute, the justices could not appoint a greater number. It is plain to me, that in making the 43 *Eliz.* the legislature had the 39 *Eliz.* under their contemplation. They refer to it; and the 43 *Eliz.* was not to commence till the *Easter* following. The 39 *Eliz.* expired with the session in *December*: They therefore continued the 39 *Eliz.* till the *Easter* following. This clearly accounts for the expression four, three, or two; rather than two, three, or four; (for there is a great difference between these two expressions;) and points out to a demonstration what the legislature meant. Parishes were not so populous then; and four were thought too many; and therefore the 43 *Eliz.* gives a latitude to appoint fewer, and directs the justices to be governed by the greatness or smallness of the parish. It has been contended, that the 13 & 14 *C. 2.* is a legislative exposition of the 43 *Eliz.* I do not see that that statute will vary the question one way or the other. That statute is to make each township in the nature of a separate parish; and says, that two or more overseers shall be chosen in each township. I listened for a case to shew that in these townships they could appoint five. Upon inquiry, it does not appear that more than two have been appointed. The statute of *C. 2.* refers you, as

Not more than four, nor less than two can be appointed.

The 13 & 14 *C. 2.* makes a township in the nature of a separate parish.

to the appointment, to the statute of the 43 *Eliz.* by express words, and this reference is the same as repeating the statute. It was observed that there has been a great latitude in the construction of C. 2. that is, that it hath been extended to counties not therein named. But it would have been absurd to say, that that statute, reciting an inconvenience in *Wales*, should extend to some other place only. The statute made in the year 1740, for the parish of *St. Martin's* in the Fields, has great weight with me. This proceeded from a conviction in those that applied for the act, that they could not appoint more than four. It shews that the parliament thought it was a real doubt, and that they thought it necessary that there should be a boundary; for they have not left it at large, but confined the parish not to exceed nine overseers. There are two acts which passed after the case of the *King* and *Harman* and the act for *St. Martin's* parish, in the 17 *G. 2.* to remedy some inconveniences relating to the overseers, with regard to rates and other matters; and yet they make no alteration in the number of overseers. In the parish of *St. Clement's Danes*, they have restrained themselves to four ever since. And the precise number is not immaterial, as was said at the bar, either to the parties themselves, for it is a burthensome office, and the more there are at the same time, the quicker will the rotation be; or to the parishes for whom they are trustees, for a trust is not the better discharged by a greater number than by a few. There may be more expence in a larger number. They may be obliged to divide themselves into separate quorums; which is no immaterial consideration to the persons with whom they are to act. If five may be allowed, there will be no boundary, and then there will be great inconveniences. Upon the whole, the words are precise; and the usage, which alone occasioned my doubt, turns out the other way. This appointment is not warranted by the 43 *Eliz.*—*Denison J.* was of the same opinion. He said, in *R. v. Harman*, they did not quash the appointment, for the sake of the poor of that particular parish. This is an original creation of the jurisdiction for the maintenance of the poor. The number of overseers is the essential part of the constitution. Where a jurisdiction is created by statute, you cannot vary from it. This office is partly ministerial and partly judicial. The statute of 13 & 14 *C. 2.* is tied up according to the rules of the 43 *Eliz.* and one of the rules is the restraint. As it has rested so long, I am of opinion an appointment of five overseers cannot be warranted.—*Foster J.* I never had a doubt. The court has gone hitherto upon the prudential reason of not overturning the rates of so many parishes. In queen *Elizabeth's* time there

there were no large and populous parishes in great towns and cities. There were indeed parishes of large extent in the country; but they are provided for by the 13 & 14 C. 2. In the 43 *Eliz.* the legislature, though they took the act of the 39th for their plan, and followed it in almost every instance, yet seeing the inconvenience in small parishes, departed from it with regard to the number of overseers, which they reduced at the discretion of the justices, but did not increase in any event; probably because they thought four overseers with the churchwardens sufficient for the largest parish, (which they certainly are) though too many for the small ones. If any inconveniences arise from having too few officers in particular parishes, you must apply to parliament. It would produce confusion to have more officers. The 43 *Eliz.* is the first statute now in force, but not the first which provided for the poor. It does little more than make the 39 *Eliz.* perpetual. And there were several statutes before that. This is an authority founded upon a positive law, and therefore must be pursued.—*Wilmot J.* The words of the act are so strong, that had the usage been otherwise, I should have doubted whether that could have controuled them: but the usage being to appoint but four, it furnishes a strong argument. One of the instances cited (*St. Andrew's, Holborn*) is considered as three villis, under 13 & 14 C. 2. &c. And the act for *St. Martin's* is a strong instance of the sense of the legislature. The parliament finding two parochial officers, to wit, the churchwardens, added others for the parochial administration. The 43 *Eliz.* relaxes the 39 *Eliz.* and gives a discretion within the number four. In the 18th clause, with respect to the island of *Fowlness* in *Essex*, a power is given to the justices to appoint such a number of overseers as the exigencies of the place shall require; which shews that where the legislature meant an indefinite number, they have expressed it. 1 *Bur.* 446. 1 *Bott.* 21. pl. 39.

H. 32 G. 3. R. v. Morris. *R. Morris* being a substantial householder of the parish of *Llangendecin* in *Caermartbenshire*, was appointed overseer of the hamlet of *Valendre* in the said parish; against which he appealed to the next sessions, where the appointment was confirmed with costs, stating it to be "on the hearing of the appeal touching the appointment of *R. Morris* as one of the overseers of the poor of the hamlet of *Valendre*, &c." To the order of sessions returned by the *certiorari*, was annexed a poor rate made on the inhabitants and all other substantial householders in the parish of *Llangendecin*, towards the relief of the poor; and in that part thereof which respected *Valendre* hamlet *Morris* was rated.—*L. Kenyon Ch. J.* This court has invariably made a distinction between orders

Nor fewer than two.

not necessary
at all should
be appointed
by one instru-
ment.

orders of justices and convictions, and said, that every thing is to be intended in support of the former. As to the first objection, that this is only an appointment of one overseer, in support of which *R. v. Loxdale* (above) was cited; to the determination of that case I subscribe my opinion, that there must be four, three, or two, overseers appointed under 43 *Eliz. c. 2*. But it never has been determined that they must all be appointed by one instrument. And here we are not left to conjecture that no other person was appointed overseer of this place, for it appears on the order of sessions, in support of which this was an appeal of "one of the overseers of *Valendre*." Then it was objected that this was not a township or vill, but only a hamlet: but "vill" and "hamlet" are in common acceptance used as synonymous terms. If, indeed, the sessions had stated specially in their order that this was not a vill, we should have been bound to quash the appointment; but as it may be a vill, we are now to intend it for the purpose of supporting the order; and if we were to look at the rate, which indeed should not have been returned by the *certiorari*, the appellant there appears to be rated for property in *Valendre*. And I am glad to find that the sessions are authorised by 17 *G. 2. c. 38*. to give costs. Both orders confirmed. 4 *T. R.* 550. 1 *Bott.* 6. *pl.* 15.

of a town-
ship.

In *R. v. I. of Clifton*, which was a question of settlement under a certificate depending upon the validity of the certificate, it appeared that the certificate had been signed and sealed by *J. W.* only overseer of the poor of the township of *S.* in the parish of *A.* The parish of *A.* was stated to consist of five townships, severally maintaining their own poor, and having separate and distinct overseers. Two churchwardens for the whole parish. At the time of granting the certificate *J. W.* was the only overseer appointed for the township of *S.* during that year. Generally, only one had been appointed for that township: there had always been a sufficient number of inhabitants to have appointed two.—It was said by *Grose J.* speaking to this point, that the stat. 13 & 14 *C. 2.* expressly requires that in every township of any parish, which cannot reap the benefit of the stat. 43 *Eliz.* there shall "yearly be appointed two or more overseers," &c. Then if the township claim the benefit of the act to appoint its own overseers, it must adhere to the direction of the act, and appoint not less than two overseers. For which reason, as it was stated that only one had been appointed during the year, in conjunction with other reasoning founded upon the statute of *W.* relating to certificates, he concluded the certificate to be void.—*Lawrence J.* and *Le Blanc J.* agreed. 2 *E. R.* 168. 1 *Bott.* 24. *pl.* 41.

4. Who may be appointed.

Substantial householders there] *M. 20 G. 2. R. v. the overseers of Weobly in Herefordshire.* There were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as *principal inhabitants* instead of pursuing the words of the statute, which are, *substantial householders*: And the other, because it only called them substantial householders, without adding *there*, or *in the parish*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. 2 Str. 1261. 1 Bott. 4. pl. 12.

Must be a substantial householder there, and so described in the appointment.

Also must be stated to be so there or in the parish.

R. v. Morris. An order of justices which appointed *A.* "being a substantial householder of the parish of *B.* to be overseer of the poor for the hamlet of *C.* in the said parish," was confirmed generally at the sessions with costs, and both those orders were confirmed in *K. B.* after argument. 4 T. R. 550.

In *R. v. Stubbs, E. 28. G. 3.* *Alice Stubbs*, widow, and two day-labourers (describing them to be substantial householders) were appointed overseers for the township of the monastery of *Ranton Abbey*; one of them was a servant to *Mrs. Stubbs*, and rented a small house only, and something more than an acre of land, where he lived, with his wife and family, and was poor; the other was a labourer and poor, but the house in which he lived, with four or five roods of land belonging to it, was his own property. — By the court; The word *substantial* is a relative term; if there were a great many opulent farmers, then the appointment of day labourers might be improper: but here, there were no other persons to serve. No better persons can be had than the place affords, and the want of them is no reason why the poor should not be provided for; and the appointment was confirmed. 2 T. R. 395. 1 Bott. 5. pl. 14.

Substantial is a relative term, and day labourers may be made overseers if there be no other person to serve.

And it seems not to be sufficient that the party appointed is an inhabitant for part of the year only, but he ought to be generally resident there; and therefore the court of king's bench seemed to discountenance a parish in choosing a citizen of *London*, who only resided with them in the summer, to be overseer; but the order being bad in other respects, no judgment was given upon this point. *R. v. Moor. Carth. 161.* 1 Bott. 9. pl. 20.

Must be generally resident.

A *mandamus* was moved for to the justices to nominate two substantial householders to be overseers of the poor of the parish of *Chardstock* in the county of *Dorset*; and there was an affidavit that at a meeting of the parish after *Easter* last, a man and a woman were elected overseers; and at a meeting

Whether a woman may be appointed an overseer.

meeting of the justices they approved of the man, and refused the woman, as being an unfit person to serve as overseer; the justices approved of the man only.—*Powel J.* A woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder.—And *Parker Ch. J.* directed, that the parish should apply to the justices to have another nominated, and if they refused, then to apply to the court for a *mandamus* the next term. *E. 10 Ann. 16 Viner, 415.*

A woman may be appointed overseer, unless there be a sufficient number of men qualified to serve, in which case it is better to choose one of them.

But in the above case *R. v. Stubbs, E. 28 G. 3*, on appeal to the sessions, this appointment was confirmed, subject to the opinion of this court, on the following case: The township of the monastery of *Ranton Abbey* is an extra-parochial place, containing three houses only, and about four or five hundred acres of land. Those three houses are respectively occupied by the appellants. *Mrs. Stubbs* lives in the *abbey house*, and occupies the greatest part of the land within the township.—Several objections were made to this appointment; one of which was, to the appointment of *Alice Stubbs*, who being a woman, could not legally be appointed to such an office. After much consideration by the court, their opinion was delivered by *Asbhurst J.* The only qualification required by the 43 *Eliz.* is, that they should be *substantial householders*: it has no reference to sex. The only question then is, Whether there is any thing in the nature of the office that should make a woman incompetent? we think there is not. There are many instances where, in offices of a higher nature, they are not held to be disqualified; as in the case of the office of high chamberlain, high constable, and marshal; and that of a common constable, which is both an office of trust, and likewise in a degree, judicial. So in the case of the office of sexton. As to the case in *Viner 415*, that is no conclusive authority. It is to be collected from the case, that there were other persons in the parish proper to serve; and if so, the court held the justices had not acted improperly in refusing to approve of a woman; where there are a sufficient number of men qualified to serve the office, they are certainly more proper; but that is not the case here; and therefore, if there be no absolute incapacity, it is proper in this instance, from the necessity of the case. And there is no danger of making it a general practice; for as the justices are invested with a discretionary power of approbation, it is not likely that they will approve of such an appointment, when there are other proper objects. Therefore we are all of opinion that the appointment ought to be allowed, and the order of sessions confirmed. *2 T. R. 395. 1 Bott. 5. pl. 14.*

Whether

Whether a *justice of the peace* may be appointed overseer, seemeth not to have been determined. *H. 30 G. 2. Rex. v. James Gayer* esquire. Two justices appointed Mr. *Gayer* to be overseer of the poor of the parish of *Rockbear* in the county of *Devon*. The sessions, upon appeal, vacate the appointment; setting forth, that it appearing to them that he was then an acting justice of the peace for the said county, and also a lieutenant of marines in his majesty's service on half pay, and that there are other sufficient substantial householders within the said parish for the doing such office, they therefore vacate and make void the appointment of the said *James Gayer*.—By *L. Mansfield Ch. J.* The sessions, upon an appeal, have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers, as the two justices had. * They have given their opinion that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion; because the legislature has intrusted them, upon an appeal, with the power of appointing overseers. If they had given no reason, their order had undoubtedly been good. We must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong, we may and ought to quash an order manifestly made, by mistake, upon an erroneous foundation. But then the bad reason given must appear to have been their only inducement. If there may have been other grounds, they shall be presumed sufficient; and the order ought not to be set aside, because some of their reasons, unnecessarily given, appear to be bad. There was no necessity for appointing Mr. *Gayer*. The sessions state that there were other sufficient substantial householders within the parish. They might think Mr. *Gayer*, under all the circumstances, improper unnecessarily to be appointed. His being an acting justice of the peace, and a lieutenant of marines, might be two circumstances which weighed among others. But it doth not follow, neither is it said, that they looked upon both or either of these reasons as an exemption from being appointed, or a disability to serve the office of overseer; and that they vacated the warrant of two justices as illegal upon that account. The execution of a discretionary power, where it is not necessary to give a reason, ought to be supported, unless the whole reason is set out, and manifestly wrong. Here, the whole reason, upon which the sessions acted, is not given. They say, there were other persons qualified. Supposing Mr. *Gayer* liable to serve the office, they might think him not so proper as many others. And therefore we are not obliged to say that the whole reason they went upon is bad; allowing (for argument) that

Whether a justice may be appointed an overseer, Qu. ?

Sessions, on an appeal, have the same latitude of discretion in judging who are fit to be nominated overseers, as the two justices had.

there arose no legal objection to the appointment of Mr. Gayer; which, I think, there is no occasion now to examine.—*Denison J.* concurred, and said, they were not obliged to give any reason at all; and if it be only an imperfect one, we ought not to quash their orders. We will intend every thing in favour of the justices, in their orders. Now here, the reason doth not appear to be a wrong reason: it is enough that they judged him an improper person to be overseer.—And by the court unanimously, the order of sessions was confirmed. 1 *Burr.* 245. 1 *Bott.* 9. pl. 21.

However *L. Kenyon* observed, in a subsequent case, that it seemed to be agreed, in *R. v. Gayer*, that the offices of justice of the peace and overseer of the poor were incompatible, because the accounts of the latter were subject to the control of the former. 2 *T. R.* 779.

Licensed dissenting teachers.

And by 1 *W. & M. c.* 18. s. 11. Dissenting teachers, qualifying themselves as therein mentioned, are exempted from being chosen or appointed to serve as overseers.

Freemen of the corporation of surgeons in London.

By the 18 *G. 2. c.* 15. Freemen of the corporation of surgeons in London, are exempted from the office of overseer of the poor.

Aldermen of London.

An Alderman of London is also exempt from serving parish offices. *R. v. Abdy*, 1 *Bott.* 8. pl. 17.

Practising barristers and attornies.

And the same is the case with respect to attornies and practising barristers. *R. v. Pordage*, *id.* pl. 16. *R. v. Prouse*, *id.*

Clergymen.

So it seems, a clergyman is not liable to serve the office of overseer; even though he have no cure of souls. 6 *Mod.*

Officer of the customs.

140. An officer of the customs also is exempted; and this, though he have not his writ of privilege at the time of his appointment. *R. v. Warner*, 8 *T. R.* 375. 1 *Bott.* 11. pl. 23.

Members of parliament, &c.

And it is said, in *Gibson's Codex* 215, that all peers of the realm, by reason of their dignity; all clergymen, by reason of their order; and all parliament men, by reason of their privilege, are exempted from the office of churchwarden.

5. *At what time to be nominated, and by whom.*

On what day to be appointed.

To be nominated early in Easter week] *E. 13 G. R. v. Clerkenwell.* The court seemed to think an appointment of overseers on a Sunday, to be a good appointment; for it may be in Easter week, and this is the first day of the week.—But the case was determined upon another point, because they were not said to be substantial householders. *Foley 4. R. v. Merchant and Allen.* 1 *Bott.* 25. pl. 43. *Id.* 29. pl. 48.

In the case of *R. v. Butler*, E. 8. G. 3. L. Mansfield asked, whether there had been any determination that an appointment on a Sunday was good? Mr. J. Aston said, he had a note from Mr. J. Bathurst, of the said case of *K. and Clerkenwell*, that an appointment made on *Easter Sunday* shall be good, it being a work of charity. But L. Mansfield said, notwithstanding that reason, I should think that an appointment on a Sunday is *prima facie* clandestine and void. 1 Bl. Rep. 649. 1 Bott. 28. pl. 47.

Appointment on a Sunday is *prima facie* void.

And in *R. v. the overseers of Bridgewater*. T. 14. G. 3. Upon shewing cause why several appointments of overseers should not be quashed, the case appeared to be a contest between two adverse sets of borough justices. Each set met before midnight of *Easter-even*, and each began making their appointment of overseers the instant the clock had struck twelve; and so kept on renewing the same appointments for an hour or two. But one set of them made a fresh appointment at eight o'clock on the Sunday morning, supposing that there might be a contest concerning the priority of those appointments which were made soon after midnight, and perhaps all of them bad. On shewing cause several cases were cited to prove the appointments good. But by L. Mansfield: The conduct of the justices in this case is a shameful prostitution and abuse of their office for election purposes. It would have been more for the interest of either side, to have waited for a legal appointment on the Monday. I do not know that there is any authority which says, that an appointment made on a Sunday is good; but it certainly is not a day for such purposes as these, and therefore I will not give my sanction to any of the appointments. Let all the appointments be set aside, and a *mandamus* be directed to the justices to make a new appointment; and let the mayor give two days notice of the time and place of meeting for such appointment. The other two judges concurred. Cowper 139. 1 Bott. 29. pl. 49.

Sunday is no a proper day for making such appointments.

R. v. Serle. E.T. 12 Ann. In this case two sets of overseers were certified on the same day: whereupon it was objected that both of the appointments were for that reason void; as where two informations on a penal statute are made on the same day, both are void. (*Hob. 209.*) *Sed non allocatur*. For although in some judicial proceedings the law considers the day as entire, and knows no fractions; yet in a bond and release, and many other things, that fiction does not hold, and these niceties should not be allowed to overthrow such orders. 1 Bott. 24. pl. 42.

Where two or more appointments are made on the same day.

If two appointments, each being of a sufficient number of overseers are made on the same day, that which is prior

in-time is good, and the second void. *R. v. Searle*. 1 *Bott.* 21. *pl.* 37. *R. v. Merchant and Allen*. *Ib.* 25. *pl.* 43.

If the appointment be not made within the month after Easter, but afterwards, it is not therefore void; the statute is only directory.

Or within one month after Easter] *H.* 13. *G.* 2. *R. v. Sparrow*. Upon a rule to shew cause, why the appointment of overseers for the parish of St. Margaret in Ipswich should not be quashed, the objection was, that the justices, upon a *mandamus* directed to them, tested after *Easter*, had appointed overseers, but that it was not within the month after *Easter*, but afterwards, and that consequently the appointment was void. But by *Lee Ch. J.* who delivered the opinion of the court; as the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void, for it would subject the parish to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justice shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l.* but that doth not make such appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions. 2 *Seff. C.* 140. 2 *Str.* 1123. 1 *Bott.* 25. *pl.* 44.

Appointment to be for what period.

An appointment for a whole year may be good. And where an appointment was for the year next ensuing, it was confined to mean the overseers years. So an appointment made on *Easter Wednesday* 1766, "for this present year" was intended the overseers year. *R. v. Jones*, 1 *Bott.* 27. *pl.* 45. *R. v. Burder*, *id.* 30. *pl.* 51. *R. v. Helling*, *id.* 28. *pl.* 46. and *R. v. Stubbs*, 2 *T. R.* 395, *id.* 30. *pl.* 50.

Sessions cannot appoint overseers, because appeal is given.

Under the hand and seal of two or more justices] *M.* 13 *G.* *R. v. Chilmerton and Flagg*. The sessions appointed overseers; but the order was quashed by the court of king's bench, because the sessions have no original jurisdiction in that case by the statute. 1 *Seff. C.* 260. *Foley*, 7. 1 *Bott.* 16. *pl.* 33.

And the reason is, because the statute gives a power of appealing to the sessions against the order of appointment; which power by this means would be taken away.

Parol proof of appointment inadmissible.

And, as the statute directs the appointment to be under the hands and seals of two justices, no parol evidence can be

be given of it. *R. v. Arnold.* 1 *Str.* 101. 1 *Bott.* 16. pl. 32.

An appointment of overseers under the 43 *El. c. 2.* signed by two justices *separately* is bad: for where an act of parliament empowers two justices of the peace to execute a judicial act, they must meet and execute it together. *R. v. Ferrest.* 3 *T. R.* 1 *Bott.* 38. 17. pl. 35. *R. v. Great Marlow,* 1 *E. R.* 244. 1 *Bott.* 18. pl. 36.

The two justices must be together.

R. v. I. of Great Marlow. Two magistrates, by warrant under their hands and seals, appointed four persons to be overseers of the poor of *Great Marlow.* Afterwards at another meeting of two magistrates, one of whom had been present at the former meeting, and one had not, one of the four persons so appointed came and claimed exemption, which claim being considered just, these two magistrates exempted him, and in due form appointed another person in his place: All this was shown to the court of king's bench upon affidavit, and the court held, after consideration, that the practice of hearing of affidavits in support of objections against appointments of magistrates was usual; and that the magistrates having made their first appointment of four overseers, all further jurisdiction of the magistrates in that respect was at an end. It was not competent for other magistrates to make a new appointment in cases not authorized by the statute. 2 *E. R.* 244.

The party appointed must, to procure his discharge, appeal to the sessions. *Id.*

There can be no appeal to the quarter sessions from the acts of persons calling themselves justices, and who are not so. If persons exercise a jurisdiction who are not entitled, the whole is a nullity, and the party aimed at need not pay any regard to it. *R. v. Flisber and Towell,* *M.* 22 *G.* 3. 1 *Bots.* 69. pl. 82.

Appointment by persons calling themselves justices, but not being such, a nullity.

And the justices at sessions have power to look into the jurisdiction of the two justices. *Albrighton and Skipton.* 1 *Str.* 300.

Sessions may look into the jurisdiction of the justices; But their jurisdiction may be admitted.

But where it is stated in the notice of appeal, that those of whose acts complaint is made are justices, the party complaining is concluded, for he thereby admits their jurisdiction. *R. v. Flisber and Towell.*

M. 13 *G.* 2. *R. v. Sparrow.* An appointment of overseers, not mentioning the justices to be of the division, was held to be good enough, for that the words in this case are only directory. 2 *Seff. C.* 240. 1 *Bott.* 25. pl. 44.

In or near the parish or division.

The words 'in or near' are a loose indefinite expression. If a justice live 20 miles off, if there be none nearer, he must be said to be near. It is a word of relation. *Per L.*

Mansfield, C. J. in R. v. Loxdale and others. 1 Bott. 21. pl. 39.

Where the parish is part within and part without a corporation.

When a parish is part within and part without a corporation, the mayor of the corporation and a justice of the corporation are not two justices within the meaning of the statute. *R. v. Butler and another. 1 Bott. 16. pl. 34.*

Appointment of overseers by two justices of the division where, W. lay, without saying that W. was in the corporation of S, or what county, is ill. *R. v. Holditch. 1 Bott. 24. pl. 11.*

In some of the ancient statutes, not now in force, as particularly the 22 H. 8. c. 12. the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statutes, that the justices *of the division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division* in the sense which the statutes intended; and consequently it cannot be necessary to set forth now, that the justices *are in or near the division*.

6. Of the 13 & 14 G. 2.

And many other counties in England and Wales T. 27. C. 2. in the case of *Skillington and Norton* it was held, that although other counties in general are here mentioned in the recital; yet the statute doth not extend to any other counties but those expressly named, none others being specified in the enacting part. 2 Lev. 142.

But afterwards, in the case of *Dolting and Stokelane*, H. 11 Ann. It was held by the whole court, that by reason of the words [*and many other counties in England and Wales*] the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in *Wales*. *Foley*, 98. *Bott.* 35. pl. 57.

And in the case of *Clifton v. Churcham*, H. 12 G. 2. It was adjudged, that the act extended to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And *Lee Ch. J.* said that so it was determined, upon great debate and consideration, in the aforesaid case of *Dolting and Stokelane*; which case hath been ever since adhered to. *Andrews*, 314. And he expressly denied the case in 2 Lev. 142. to be law.

A parish consisting of several divisions, but having always had two overseers for the

By reason of the largeness of the parishes cannot reap the benefit of the act of 43 Eliz.] T. 27 & 28 G. 2. R. v. the justices of Middlesex. On a rule to shew cause why a *mandamus* should not go to compel the justices to appoint overseers for

for the township of *Kentish Town*, it appeared by the affidavit that this parish had always had two overseers: that a rate had been made as one rate for the whole parish: that their appointments had been for the whole parish, but that each overseer had collected and paid within his own division; and if at the end of the year there were a surplus in either of their hands, so much of it was paid over into the hands of the other overseer as to make them both equal: that they had one workhouse; one overseer looked over it one week, the other the next.—By the court: If this be a case that falls within the 13 & 14 C. 2. a *mandamus* is a writ of right, and the court must grant it. It has been determined, that this statute is not to be confined to the counties mentioned in the statute. *Kentish Town* has never been considered as a separate division; and the overseers have been usually appointed for the whole parish. What is declared from the affidavit shews, that they can do very well under the 43 *Eliz.* without calling in aid the 13 & 14 C. 2. for they have two overseers, and the methods they have used to collect their rates, and to take care of their poor, is very just and reasonable. To bring this within the statute, they must shew this to be a distinct vill or township. We expected they would have shewn that they had separate overseers, maintained their poor separately, and had a separate rate.—And the rule for a *mandamus* was discharged.

Bolt. 17. 1 *Bott.* 39. pl. 62.

H. 5 G. 3. *Peart v. Westgarth*. It was stated for the opinion of the court, That the parish of *Stanhope* from the 43 *Eliz.* to the 9 G. 1. had one joint appointment of overseers of the poor of the said parish; and during all that time the poor of the said parish were jointly relieved and maintained by entire and general rates upon the whole parish: That during the time above mentioned, there were four churchwardens, and four overseers of the poor; which four overseers were respectively nominated out of each of the four quarters or districts within the said parish: That the said parish is 20 miles in length from east to west, and eight miles at a medium in breadth: That in the 9 G. 1. at the general quarter sessions for the county of *Durham* it was ordered, that the several townships within the said parish should maintain their poor separately; and from that time there had been separate appointments of overseers for each of the said four quarters or divisions. The case further stated, that orders of removal had from time to time been made since the 9 G. 1. for the removal of poor persons from one of the said quarters or districts to another, and appeals made by one quarter against another, concerning orders of justices relating to the poor of each. The question was,

whole and a rate for the whole, will not now be subdivided.

It ought to appear that the parish is unable to enjoy the benefit of the 43 *Eliz.* and an order of sessions establishing a subdivision of maintenance of poor, and acquiesced in for many years, is not conclusive against reverting to the former usage under the 43 *Eliz.* which had continued for 120 years.

Whether the several places or districts were one entire parish, township, or village? or whether the said several places, being so divided as aforesaid, constituted four distinct and separate townships or villages within the 13 & 14 C. 2. c. 12.?

By L. Mansfield and the court: The policy of this law of the 13 & 14 C. 2. was mistaken. It went upon a wrong principle. The divisions ought rather to be enlarged than diminished. As to the question itself: It ought to appear, that there was inability in the parish to have the benefit of the act of the 43 Eliz. Now, here appears quite the contrary for a great number of years; so that there is no foundation for the division. The acquiescence under it was upon a false notion, that the sessions had such a power, which they had not; and there is no inconvenience in setting right this wrong usage which has obtained for forty years. Here the foundation is wanting; therefore they ought to appoint overseers for the whole parish. 3 Burr. 1610. 1 Bott. 42. pl. 65.

The townships of a parish having jointly relieved the poor of the parish, it must appear that there is a disability in the parish to reap the benefit of 43 Eliz. to authorize a deviation from it; and any acquiescence under such a deviation will not alter the law.

E. 20 G. 3. R. v. I. of Uttoxeter. On a rule to shew cause, why an order of sessions confirming separate appointments of overseers of the poor for the township of Uttoxeter and three other divisions of the parish of Uttoxeter in Staffordshire, should not be quashed, it appeared, that the parish of Uttoxeter is 5 miles in length, and 5 in breadth, and contains 5 several townships: That the said townships are one entire parish: That ever since the year 1643, they had had separate appointments of overseers in the several townships within the said parish; but that until the year 1730 they jointly relieved and maintained the poor in and throughout the parish; but since that time they had generally maintained them separately in the several divisions.—L. Mansfield said, The case of *Peart v. Westgarth* decides the question. It must appear to the court that there was a disability to reap the benefit of the statute of 43 Eliz. Here the contrary appears. Though there were separate overseers, there was a joint maintenance till 1730. The acquiescence of the parish for a number of years will not alter the law. The case of *Peart* and *Westgarth* was well considered. The order of sessions, and the four appointments of overseers, were quashed. Douglas 332. Cald. 84. 1 Bott. 42. pl. 65.

And in R. v. I. of Beeding, otherwise Seal, E. 20 G. 3. The same point came in question, where the court recognized the doctrine laid down in the case of *Peart v. Westgarth*, as having fully settled the matter. Cald. 90.

But in R. v. Sir Watts Horton bart. and another, M. 27. G. 3. A rule had been obtained calling upon the defendants, to shew cause why a *mandamus* should not issue, commanding

A parish consisting of eight townships, and three of them

manding them to appoint two overseers for the township of *Pilsworth* in the said county.—The affidavits stated, That the parish of *Middleton* consisted of eight separate and distinct townships or villages; to wit, *Middleton*, *Thornham*, *Hopwood*, *Pilsworth*, *Birtle cum Bamford*, *Ashworth*, *Ainsworth*, and *Great Lever*; each of which had immemorially had a separate constable and churchwarden. That *Ainsworth* and *Great Lever* from time immemorial, and *Ashworth* for the space of about seventy years, had had separate overseers. That before the separation of *Ashworth*, there was a joint appointment of six overseers for the six townships, one out of each, who made a general rate or assessment for the poor of all the six townships; and that each overseer acted within his own township; but that at the end of the year, there was a general settlement of all disbursements, and the expenses borne equally by all. That since the separation there had been a like joint appointment of five overseers, for the remaining five townships, who had acted in the same manner as before the separation. That the parish of *Middleton* could not reap the benefit of the 43 *Eliz.* in relation to the maintenance, relief, and government of its poor, on account of its largeness, being 14 miles in length, and 10 in breadth, and also on account of its great population, and because three out of the said eight townships maintained their own respective poor. That the defendants were requested, at the last annual meeting, to appoint two overseers for the township of *Pilsworth*, which they refused. The affidavits against the rule stated, that the parish of *Middleton* consisted of four distinct and separate townships, viz. *Middleton*, *Ashworth*, *Ainsworth*, and *Great Lever*; and that the township of *Middleton* consists of five separate hamlets or precincts, and not separate townships. That the rates and assessments had been made generally for the township of *Middleton* at large, and not for each separate district; and that the overseers' accounts had been made out in the same manner.—*Ashhurst J.* This is a very plain case. It has been argued against the rule, that if the court should grant a *mandamus* to appoint separate overseers for the township of *Pilsworth*, one of the five remaining districts, it will necessarily follow that the others will be entitled to the same privilege. But that argument applies equally the other way; for as soon as the other three townships were separated, the remaining five had a right to be so. It is clear that the parish, as a parish, cannot have the benefit of the statute 43 *Eliz.* because it has always had a greater number of overseers than are allowed by that act. Therefore, upon that ground, as well as upon the former, that the other three townships have had separate overseers, I am of opinion that

being separated from the rest, and maintaining their own poor, and having always had separate overseers, the remaining five are entitled to separate overseers.

the five remaining ones are also entitled to have them.—*Buller J.* The parties applying for this rule must necessarily make out two points before they can succeed. First, that this is a township: and secondly, that it cannot have the benefit of the 43 *Eliz.* The last is the point which has been most relied on; for as to the first, it certainly is a township. Wherever there is a *constable*, there is a *township*. There may be a constable for a larger district than a township, but not for a smaller. The doubt in many of the cases, whether such a place was a township or not, has arisen where there was no constable. Then the remaining question is, Whether the township of *Pilsworth* can have the benefit of the 43 *Eliz.*? What is a decisive answer against that is, that the other three townships have separate overseers: We must consider what is meant by *the benefit* of the statute. It is that the parish may maintain their own poor, *as a parish*; for unless they can do it *as such*, they cannot have the benefit of the statute. Now it is here stated, that three of the townships maintain their own poor; but unless they *all* join, they cannot reap the benefit of the statute. It has been argued that the parties applying for the *mandamus* should have shewn special reasons to the court why they cannot have the benefit of the statute. But in fact they have done so; for they have stated the largeness of the parish, and its great population, which circumstances are not denied by the other side. Independent of these reasons, another ground laid for the *mandamus* is, that the five remaining townships require five overseers. If from necessity they must have five overseers to govern their poor, that affords a strong argument to prove, that even if these five comprehended one parish independent of the other three, yet they could not enjoy the benefit of the 43 *Eliz.* which allows only four overseers. The cases which have been mentioned were all rightly decided, but they do not apply to the present. As to the above case of *Peart v. Westgarth*, the parish had enjoyed the benefit of the statute of *Eliz.* for 120 years. After such a length of time, the court said, that they must have shewn to them some strong reasons to induce them to believe that it could not be continued, before they would appoint overseers in a different manner from that pointed out by the statute of *Eliz.* notwithstanding any intervening custom for 40 years: but no sufficient reason appearing, they directed one joint appointment for the whole parish. Next, as to the aforesaid case of *R. v. the justices of Middlesex*, it appeared most clearly that the parish of *Kentish Town* could have the benefit of the statute of *Eliz.* There were two overseers appointed for the whole parish, which was sufficient to answer the purposes of the statute. Then

By the benefit of 43 *Eliz.* is meant, that the parish may maintain their own poor as a parish.

Then as to the above case of *R. v. Uttoxeter*, the answer to it is, that the parish did not shew that they could not have the benefit of the 43 *Eliz.* *Per curiam*: Rule absolute. 1 *T. R.* 374. 1 *Bott.* 54. pl. 72.

Also the case of *R. v. Leigh*, *T.* 30 *G.* 3. The sessions quashed the rate generally, and stated the following case: — The parish of *Leigh* is 5 miles in length and 4½ in breadth. It consists of 8 townships. The township of *Field* (one of the 8) is within the said parish, and consists of 6 farm houses, with farms thereunto belonging, containing 700 acres of land, and 3 or 4 small houses. The township of *Field* for 60 or 70 years (and before, for any thing that appears to the contrary) has had separate overseers, and separately maintained its own poor. Two overseers have been appointed for the township of *Field*, and two for the rest of the parish of *Leigh*. A constable has regularly been appointed for the township of *Field*, and another for the rest of the parish. In 1764 a pauper was removed by two justices from the parish of *Leigh* to the township of *Field* within the said parish, from which it does not appear there was any appeal.

— Lord *Kenyon* Ch. J. There is no doubt but that this case is within the 13 & 14 *C. 2. c. 12.* In some of the cases it has been made a question, whether the particular district were or were not a vill or township; but no such difficulty occurs in this case, because it is stated as a fact that *Field* is a township. Then the question is, whether at the time of passing the statute of *C. 2.* this district was in a situation to receive the benefit of 43 *El.*? for if the parish were properly divided at that time, nothing which has happened since will induce us to make any innovation. In the cases cited, *Pearl v. Westgarth*, and *R. v. Justices of Middlesex*, it was stated from the time of *El.* down to the reign of *G. 1.* those parishes had in fact reaped the benefit of the statute of *El.* whereas here, for 60 or 70 years, and perhaps for a longer period for any thing that appears to the contrary, this parish has been subdivided, and has not had the benefit of that statute. This therefore is like the case of *R. v. Sir Watts Horton*. It has been doubted whether the poor are better maintained in large or small districts, though the former has been judicially said in this court: In small divisions the officers are more attentive to their duty; and in the part of the country with which I am acquainted, the poor are better provided for in the small districts. Therefore as the usage in this case coincides with our idea on the policy, and as we are warranted by the adjudged cases on this point, we think it highly proper that the division of this parish, which has subsisted so long, should continue; and consequently that

If a parish have not had the benefit of the 43 *Eliz.* as far back as memory goes, it shews that it cannot have it.

It is not necessary to shew that it is impossible a parish can have the benefit of the 43 *Eliz.* it is enough to shew that it is inconvenient for it to do so.

If a parish were divided properly, the 13 & 14 *C. 2.* the court of *K. B.* will not now disturb that division.

that the order of sessions should be affirmed (a).—*Asb-
hurst J.* Wherever it appears that for any length of time the
parish has had the benefit of 43 *El.* it must be shewn that
from the increase of population, or some other cause, it is
impossible that they can continue to reap the benefit of that
statute. But that is not the case here; and nothing can be
stronger to shew that this parish cannot have the benefit of
43 *El.* than that in fact they have not had it as far back as
any memory goes.—*Buller J.* Before a parish can be sub-
divided into smaller districts for the maintenance of their
poor, it must appear that they cannot have the benefit of
43 *El.* But it is material to consider the meaning of the
phrase, that a parish cannot reap the benefit of that statute.
It does not mean that it is absolutely *impossible* for them to
maintain their own poor *as a parish*, for that would not be
the case even if the parish were 100 miles in circumference,
but that it is *inconvenient* for them so to do. Now in judging
on a question of convenience, there can be no doubts on the
facts of this case; for it is stated that, for 60 or 70 years
past, and perhaps for all preceding times, this parish have
not maintained their own poor jointly. And the strongest
instance of their having been subdivided for a long period,
is the circumstance of the parish at large having removed a
pauper into this particular district, as a place liable to main-
tain its own poor separately. I entirely agree with my
Lord Ch. J. that greater care is taken of the poor in small
than in large districts. And if in any case we were to find
that it was formerly inconvenient to the parish at large to
maintain their own poor jointly, though it were convenient
for them to do so now, we would not assist them in over-
turning the old practice; for that would operate as a dis-
couragement to the efforts of individuals to reduce the poor
rates which have succeeded in many small districts. I even
go further; for though it should appear that a parish had en-
joyed the benefit of 43 *El.* yet if they could not now conve-
niently maintain their own poor jointly, we would permit
them to divide themselves, provided there be such legal divi-
sions in the parish as are capable of supporting their own poor
separately under the provisions of the statute C. 2.—*Grose J.*
In determining this question, I shall not proceed on any spe-
culation of my own; for the act of parliament itself has sup-
posed that the largeness of a parish may be a good reason for
dividing it. Though if I were to give my own opinion of
the policy of the law, I should not hesitate to say, that from

By having the
benefit of 43
Eliz. is meant
the being able
conveniently to
maintain their
own poor.

A parish will
be permitted
now to sub-
divide, if it can-
not now conve-
niently main-
tain its own
poor jointly,
provided there
be legal divisions
for that purpose.

(a) The rate had been made for the whole parish, and the
township of *Field* claimed a right to have a separate rate for itself.

my

my own experience I have found that the poor are better provided for in small than in large districts. The question here is, whether it does not appear that the parish cannot have the benefit of the statute of *El.?* and I am clearly of opinion that on these facts they cannot. For in the first place it does not appear that the parish have ever *as a parish* maintained their own poor. And in the next place, it is stated that in 1764 a pauper was actually removed from the parish at large to this very township, which is an admission on their part that they had no right to call on this district to contribute to the general poor rate of the parish. Order of sessions confirmed. 3 T. R. 746. 1 Batt. 58. pl. 74.

E. 31 G. 3. R. v. *Newell*. Two justices allowed a poor rate for the parish of *St. Giles* in *Reading*, including the hamlet of *Whitley*, *Berks*. The sessions on the appeal of *Thomas Newell* confirmed the rate, and stated the following case:—The parish of *St. Giles*, *Reading*, lies partly within the borough of *Reading*, and partly without. The hamlet of *Whitley* is that part which lies without the borough, is about 3 miles square, and has immemorially had a separate constable and churchwarden, but no other church than that which is common to the parish at large. And the hamlet people have been used to attend the vestry meetings of the parish at large at the church, but the people of that part of the parish out of the hamlet never attended the hamlet meetings; for which hamlet meetings to choose officers for the hamlet, notices were published in the church on the *Easter Sunday* in every year. From the year 1648 to the time of trying this appeal the inhabitants of the hamlet part of the parish have had overseers of the poor separately appointed for the hamlet, and chosen at meetings of the hamlet people only; the number of which overseers has varied from that time. The hamlet have in every year had either two or three overseers, except in four different years at different intervals, when they had one. Such overseers have separately distributed and laid out the money within the hamlet, and their accounts have been separately kept, and separately allowed by the justices; and it does not appear that any interference has ever been made in the distribution or accounts by the payers in the borough part of the parish, except at the general settlement of accounts, as hereinafter mentioned. The part of the parish lying within the borough has during the same time invariably had one churchwarden and three overseers; and such overseers of the borough part have acted upon their separate rates and in their distributions and accounts distinctly from the hamlet and the inhabitants or overseers of the hamlet, except that the overseers of the borough have afforded relief to the poor persons belonging to the hamlet part of the parish when resident

Where a parish consists of several districts, each of which has always had its own overseers, the whole number of whom has always been five, and there have been removals from foreign parishes to one of these districts, but the whole expences of the parish have been computed into one integral sum, and defrayed by the districts according to a certain proportion at the end of the year, it will be inferred that the parish could have the benefit of the

43 Eliz.

in

to the hamlet of *Whitley*, and the paupers re-
 ingly without appeal ; particularly in 1755 :
 removal unappealed from was made from the par-
rence, Reading ; and in 1774 another order was
 parish of *St. Mary*, in *Reading* : But it doth r
 orders of removal have ever been made from
 hamlet to or from that part of the parish of *St. C*
 within the borough. In 1749 the following or-
 viz. “ *April* 23, 1649. Whereas at the quarter 1
 “ for the county of *Berks* the 3d of *April* insta
 “ ence of the rates concerning the poor of the
 “ *Giles* between the liberty of *Whitley* and th
 “ bitants within the borough of *Reading* in the s
 “ referred to us ; we, upon hearing all parties,
 “ the inhabitants within the liberty of *Whitley* sh
 “ to a former order, pay the yearly sum of
 “ monthly, apportioned according to the statu
 “ relief of the poor of the parish of *St. Giles* ;
 “ inhabitants of the parish within the borough
 “ yearly sum of 35*l.* and in case the said sum
 “ sufficient for the relief of the poor of the pari
 “ liberty of *Whitley* and the other inhabitants
 “ shall pay proportionably according to the forme
 “ in the mean time the overseers of *Whitley* ha
 “ accounts of the overseers of the parish of *S*
 “ finding the necessities of the poor do require
 “ forthwith their proportionable arrears.” Si
 justices. Ever since that

house in that part of the parish of *St. Giles* which lies within the borough, in which the poor both of that part and the hamlet part of the parish have been jointly maintained, and the expences attending such maintenance have been defrayed by the two parts of the parish respectively, according to the proportions of 5 to 3. The overseers of the hamlet have uniformly, as far as any evidence could be had, made rates separately for the hamlet, and it does not appear that since the year 1648 the persons living in the hamlet have ever been charged by a rate made by the overseers of the parish till the rate now in question. In the year 1740 a rate was made in the hamlet, and acted under, intituled, "A rate made by the churchwardens and overseers of the poor of the hamlet of *Whitley* in the parish of *St. Giles, Berks*, as well towards the necessary relief and maintenance of the poor of the parish as of the hamlet, after the proportion of 9d. in the pound, charged on the inhabitants of the hamlet;" and such has been in general the mode of intitling all the rates made in the hamlet part of the parish to the time of the present rate. In pursuance of 26 G. 3. c. 56. separate returns were made by the parish of *St. Giles* and the hamlet of *Whitley*, as distinctly maintaining their own poor. The inhabitants of *Whitley*, thinking themselves aggrieved by continuing the payment of $\frac{1}{4}$ of the general expenditure, in Sept. 1789 the officers of the hamlet gave notice to the officers of the borough part of the parish that they would not pay any rate made by the latter, or contribute to the relief of the poor within the borough part, (except of those belonging to the hamlet of *Whitley* which should from time to time be in the poor house of the parish of *St. Giles*, for which expence they would contribute their fair proportion according to any rate which should be agreed upon,) it being their intent to apply all future monies raised by a poor rate intended to be separately made for the hamlet to the relieving of the poor only who should belong thereto separately, and without the interference of the parish of *St. Giles*. After this notice had been given, the hamlet of *Whitley* made a rate, intituled, "A second rate or assessment made the 2d of Jan. 1790, by the overseers of the hamlet of *Whitley*, for the necessary relief of the poor of the hamlet, at a proportion of 2s. in the pound," which was duly published. And after this notice, the next rate but one made by the borough part of the parish of *St. Giles* was the rate in question, and which was intituled, "A rate for the relief of the poor of the parish of *St. Giles*, in Reading, including *Whitley* hamlet part of the said parish, &c." but it does not appear that any former rate for the borough part of the parish, made use of the words, "including *Whitley* hamlet part of the parish." The appellant

Newell

distinct rates, and *distinct accounts* ; but in these districts are not distinct accounts, but on the contrary a *joint account for both*. On the facts disclosed in the order does not appear that those two districts, which are in the same parish, cannot have, nor is it stated that in point of law they have not had, the benefit of the 43 *Eliz.* but on the contrary almost every fact in the case goes to establish this : that they have squared their conduct rather by that statute than the statute of C. 2. For if they had proceeded otherwise there would have been no communion between them ; they would have acted to all purposes as if they had been perfectly distinct parishes. It is indeed stated that their removals to *Whitley* from several different parishes do not pretend that there ever was one from *St. Giles*. Probably distant parishes may have been deceived by districts having separate overseers, and have concluded thence that they were separate parishes : but their conclusion cannot vary the case. The material facts in the order are all included in those few lines which follow the order. To that order I only refer as a date in this case ; it is not extra-judicial : but it is stated that “ ever since that order was made, the directions contained in it have been complied with by the two parts of the parish of *St. Giles*, in regard to their respective contributions to the poor ; that they have accordingly, the hamlet $\frac{3}{4}$ and the borough part $\frac{1}{4}$ of the whole expences incurred by the poor of both parts of the parish, the whole expences, when incurred, being computed in

each district was to pay, those indeed would not be binding at this time, if upon enquiry it should appear that they are unequal, considering the present circumstances of the parish. If that had appeared in the case which is attempted to be inferred from it, that these districts cannot reap the benefit of the statute of *Eliz.*, the objection would be well founded, but it appears that they have had the benefit of that statute. The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than 4 overseers: but that appeared to be the case in several other parishes, on enquiry directed by *L. Mansfield* in *R. v. Lexdale (a)*: So that though it may be a very material ingredient in these cases, it is not a decisive one. As therefore it is not stated as a fact in the case that these districts cannot reap the benefit of the 43 *Eliz.* but as it appears (on the contrary) from all the facts considered together, that they have had the benefit of it, we should overturn all the authorities if we were to determine that these districts might now be subdivided.—*Ashebursh J.* One material fact is wanting in this case, which occurred in the above case of *R. v. Sir W. Horton*, where it was stated that those townships could not reap the benefit of the 43 of *Eliz.* The justices at the sessions should have found that fact one way or the other. But, though they have not directly stated that fact, they confirmed the rate which was made for both the districts together; which rather shews that in their opinion these places could have the benefit of 43 *Eliz.* What is decisive in this case is, that it does not appear that these districts have ever acted separately, but on the contrary that they have had one *joint sum* for the poor of both parts of the parish, and that they have settled their accounts at the end of each year.—*Grose, J. (b)* Nothing is stated in this case to satisfy my mind that this parish cannot reap the benefit of 43 *Eliz.* but that on the contrary they have in point of fact had it, except in one or two instances where they have acted otherwise merely for their own convenience. In the first place, there have never been any removals from one district to the other; next, all the poor have been maintained together in one poor-house; and the inhabitants of the hamlet have constantly attended the vestry meetings of the parish. Now these three circumstances convince me that this parish can have, and has had, the benefit of the statute of *Eliz.* If it could not, the justices at the sessions should have said so: but they seem to have entertained a different opinion by confirming the rate.—Order of sessions confirmed. 4 *T. R.* 266. 1 *Bott.* 60. *pl.* 75.

Justices at session ought to find the fact of ability one way or the other.

(a) *Ante* this same title.

(b) *Buller J.* absent.

Lane

will for the liberty; and separate rates and removals from one part to the other. In 17 and the *Berkshire* district united by agreement: liberty also acceded to the union. From 17 (the period of bringing the action,) there has been four and no more overseers, and one rate per parish, and the 43 *Eliz.* had been acted upon. This action was brought for the purpose of : the arrangement existing previously to 1773, as two justices who had granted a warrant of distress which the plaintiff's goods were taken for a rate having been made by the four overseers per parish. The jury found for the defendants in the direction of the judge. Upon a motion to shew cause why the verdict should not be set aside, trial granted, *the court* refused the rule; because it was the jury's province to shew whether the parish circumstances could have the benefit of the agreement there was no evidence to shew that they could to the usage for 30 years of actually enjoy the agreement shewed that in the opinion of the court of that period, they might have the benefit of it and it now appeared that in point of fact it had been under it ever since. There therefore seemed to be no ground for disturbing the practice which had prevailed for time. 7 *E. R.* 1. 1 *Bott.* 705. *pl.* 1056.

R. v. Watson, *H.* 46 *G.* 3. The court of c

state those facts from whence we must necessarily see that the parish can or cannot have the benefit of the statute. The enacting words of 13 & 14 C. 2. c. 12. s. 21. though general must be taken to refer to parishes so circumstanced. —The case was sent back to the sessions to be restated. 7 E. R. 214. 1 Bott. 714. pl. 1059.

R. v. Palmer, E. 47 G. 3. The question discussed in *Lane v. Cobham*, (ante) was again brought before the court. A *mandamus* was moved for to the defendants, justices for the county of *Wilts*, commanding them to appoint two or more overseers of the poor within that part of the parish of *Wokingham* which lies in *Wilts*. The leading facts stated in the affidavits in support of the application were, the subdivision of the parish into three parts, the corporate town, the *Berks* liberty, and the *Wilts* liberty: that from 1613 to the year 1638, bonds of indemnity had been given by individuals to indemnify the several divisions of the parish from probable charges: That certificates had been granted from 1705 to 1769, by each of the three districts to one of the others: That in the 12 *Anne* there had been an order of removal from the *Berks* to the *Wilts* part of the parish confirmed on appeal. The church was in the *Wilts* liberty. One churchwarden was appointed out of each district at the consistory court of the dean of *Salum*. Separate constables were always appointed for the several districts, by the proper jurisdiction of each. Till 1774 there had always been distinct overseers for each district. Since 1774 there had been always a joint rate for the town and parish of *Wilts*, but the overseers collected their several proportions separately, and kept separate accounts.—On the other side it was stated that an entry appeared in the parish books, dated 1775, of an agreement by the *Wilts* district to become one parish with the town of *Wilts* and the *Berks* district, since which time one general rate had been made for the whole parish; that the several overseers had collected in their several districts, and paid their several poor: that there had been one general poor-house, managed alternately by the officers of the several districts, and a general settlement of accounts at the end of each year.—That in 1638 an order of sessions was made at *Newbury*, ordering a joint rate to be made by the whole parish, in all taxes and rates for the relief of the poor. There were contradictory statements of the usage as to the maintenance of the poor previously to the year 1613.—After much consideration the opinion of the court was delivered by Lord *Ellenborough* C. J.—This application was made upon the alleged ground that the inhabitants of *Wilts* ‘had not nor could’ reap the benefit of the 43 *Eliz.* It appears doubtful upon the evidence in the affidavits.

advantage on both sides, whether at the time of the passing of the 13 & 14 C. 2. the parish had or could have the benefit of the 43 *Eliz.* But supposing that in fact it '*had not now*' '*could have*' that benefit conveniently by a joint parochial rate for the maintenance of all its poor, under the joint management of not more than 4 overseers in the whole; and supposing the poor to have been immediately *thereafter* maintained in three separate districts, as it is now sought they should be, the question is, Whether it were not competent to the parish, if they found it more convenient to do so, to cease acting under the stat. C. 2. and to recur to the provisions of the 43 *Eliz.*? No decided case has excluded this provision from receiving a prospective construction. The words '*have not*' were of themselves sufficient to cover any then actually existing case, in which parishes did not reap the benefit of the 43 *El.* The word '*cannot*' though strictly applying to present time, yet is often used prospectively; and as the varying state of parishes may make the provisions of the stat. C. 2. as necessary in respect to future cases, as those which existed at the time of passing the act, we think sound construction requires that it should be deemed applicable to both descriptions of cases. The language of Lord *Kenyon* in *R. v. Leigh*. 3 T. R. 746. is rather applied to the expedient exercise of the discretion of the court, than to its legal power in this particular. And *Buller J.* there also considers the discretion of the court as not bound down by the actually existing practice at or immediately after the passing of the stat. C. 2. According to our construction of the statute as now adopted by us, the word '*cannot*' must be read as '*may not*;' the words '*shall after the passing of this act be maintained,*' &c. must be understood as not merely imperative to the then existing cases but as applicable to other parishes which in future might be similarly circumstanced; and as ceasing to be imperative when any parish might reap the benefit of the 43 *El.* considering therefore the question of granting this *mandamus* as open for our discretion, we cannot discover any such preponderating reasons of convenience or policy as should induce us in the exercise of a sound discretion so to interfere. 8 E. R. 416.

If in any place there shall be no such nomination as is before appointed] That is, in *Easter week*, or within one month after *Easter*. For the clause doth not suppose that no overseers at all are appointed within such place, but only none within such time; for the penalty is required to be levied by the *churchwardens and overseers*, or one of them.

Every justice of the division shall forfeit 5 l.] This proceeds upon the supposition of the justices being obliged to divide; for in that case the appointment was to be by the justices in or near the division, and not otherwise: But now the justices at large are all equally concerned: and therefore it seemeth, that this penalty cannot now be levied on any particular justice. But if in any place no overseer shall be appointed, a mandamus will go to the justices at large, to compel them to appoint.

And that the justices may know what persons are fit to be appointed overseers, it is usual and requisite for them to issue their precepts in some such form as here followeth; viz.

Warrant for returning lists of overseers.

Westmorland. } To Henry Wilkinson, gentleman, high constable of Kendal Ward, within the said county.

WE, two of his majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby require you forthwith, upon your receipt hereof, to issue your warrants to all the petty constables within your said ward, in the form or to the effect, according as upon this our warrant is indorsed: Given under our hands and seals the ——— day of ———

The form of the said high constable's warrant to the petty constable.

Westmorland, } To the constable of ———
Kendal Ward.

BY virtue of a precept from two of his majesty's justices of the peace in and for the said county (one whereof is of the quorum) to me directed, you are hereby required immediately upon sight hereof to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices and others his said majesty's justices of the peace for the said county, at ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand the ——— day of ——— in the year of our Lord ———.

Henry Wilkinson, high constable.

And the form of an appointment of overseers, clear of the objections above mentioned, may be thus:

Form of an appointment of overseers.

Westmorland. **WE**, two of his majesty's justices of the peace in and for the said county, one whereof of the quorum, do hereby nominate and appoint A. O. and B. O. being substantial householders of the parish [or township] of — in the said county, to be overseers of the poor of the said parish [or township] according to the direction of the statute in that case made and provided. Given under our hands and seals (within a month after Easter).

But by a remedial clause, in the act of the 17 G. 2. c. 38 it is enacted, that the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers. s. 8.

7. Of the Appeal.

Appeal against the order of appointment.

If any person shall find himself aggrieved, by any act done by the said justices, he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 El. c. 2, s. 6.

Parishioners as well as overseers appointed, may appeal to the sessions against the appointment.

If any person] In *R. v. Thomas Forrest* and others, it was adjudged, that the parishioners as well as the overseers who are appointed, may appeal to the sessions against the appointment made by the justices: And the court said, it might happen that the parishioners might feel themselves aggrieved by the magistrates appointing improper persons, as for instance, persons who were insolvent, and such like 3 T. R. 38. 1 Bott. 70. pl. 83.

To the general quarter sessions] This clause leaves the appeal at large, and doth not restrain it to the next sessions. But the above mentioned act of the 17 G. 2. directs the appeal to be to the next general or quarter sessions, but yet not in negative words, so as to say, that it shall be at the next sessions, and not otherwise. So that both may seem to stand well together; and then the sense of the statute of the 17 G. 2. will be this, That the appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statute, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions: but in cases wherein an appeal is given by former statutes, such appeal may be to the next sessions according to this clause, or may be according to the directions of such former statutes. And in truth many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity

tunity of fraud, if they might be safe by concealing such practices until the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next sessions by the 17 G. 2.

Sessions cannot award costs unless the appeal be to the next sessions.

M. 14 G. 2. R. v. Jones. The defendant was indicted, for not taking upon him the office of overseer; and by *Lee Ch. J.* As to the question, Whether an indictment lies upon 43 *El. c. 2.* for an overseer refusing to accept the office? I am of opinion that it will. The statute enacts, that "four, "three, or two substantial inhabitants of the parish, to be "nominated by two justices of the peace, shall be overseers "of the poor." This is the manner in which this act hath constituted this officer; and then it goes on and directs particularly what are the *agenda* of an overseer; and then there is a subsequent clause that directs farther acts to be done by overseers; as to meet monthly at the church in the afternoon after divine service, &c. and annexes a penalty of 20 s. to every omission. If this clause reach only to the particular instances therein enumerated, then the refusal of such office of overseer is a case that is not provided against by this clause to undergo the penalty of 20s. for it only extends to omission after the actual acceptance of the office. I am of opinion that *Jones* may and has refused the office; and though no express indictment is given by this act of parliament for a refusal of office, yet *Jones* will be indictable upon this statute upon the principles of common law, which are, that *every man shall be indicted for disobeying a statute*; besides, as this is an order of justices, he is indictable for his disobedience and breach of that; and there is no foundation for the distinction between a constable and an overseer: therefore judgment for the prosecution. 1 *Bott.* 337. pl. 408. 2 *Str.* 1146. 2 *Sess. Cas.* 7 *Mod.* 410.

Overseers refusing to take the office, may be indicted for it.

The court will not quash an indictment against an overseer.

8. Of the overseers' duties in general.

The overseers thus appointed, and taking upon them the office, shall within 14 days receive the books of assessments and of accounts from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. 17 G. 2. c. 38. s. 1. 11. 13.

Overseers' general duty.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them, and also for

setting to work all such persons married or unmarried having no means to maintain them, and using no ordinary and daily trade, which said churchwardens and overseers or such of them as shall not be let by sickness or other just excuse to be allowed by two such justices shall meet at least once a month in the church on *Sunday* in the afternoon, after divine service, there to consider of some good course to be taken, and order it to be set down in the premises upon pain that every one of them absenting themselves without lawful cause from such monthly meeting, or being negligent in their office shall forfeit for every default 20s. to the poor, to be levied by some or one of the churchwardens and overseers by warrant from two such justices, by distress, or in defect thereof any two such justices may commit the offender to the common goal, there to remain without bail or mainprize till the said forfeiture shall be paid; provided that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 *El. c. 2. s. 1. 2. 6. 11.*

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extra-parochial places because they have no church to meet in. 8 *Mod. c. 8. G. in B.R. 40.*

Absenting themselves from such monthly meeting] An overseer cannot be adjudged guilty of absenting himself from the monthly meeting until he has had personal notice of his appointment, for if a man be regularly appointed he must have notice or he cannot be charged for neglect. *R. v. Harman, E. 12 G. 2.*

Sect. II. Of the Poor Rate; and herein.

1. *Who are to make the rate.*
2. *What are the purposes, and what the time for which it may be made.*
3. *Upon whom the rate may be made, and herein as to what persons may be rated, and next, who shall be said to be a beneficial occupier.*
4. *What property is rateable: (and for the several species of property see (post.) the title to division (4.))*
5. *Where to be rated.*
6. *Of the proportion in which the rate shall be made.*
7. *Of allowance and publication.*
8. *Appeal, and the power of the sessions thereupon.*
9. *Of distraining for the poor rate.*
10. *Rating in aid.*

It is curious to a contemplative person to investigate by what steps and degrees the compulsory maintenance became established in this kingdom. By a stat. made in the 12 R. 2. c. 7. the poor were restrained from wandering abroad, and were required to abide in the towns where they were born, or in other places within the *hundred*: within which districts they were allowed to beg. By the 22 H. 8. c. 12. the justices were to distribute themselves into several *divisions*, within which divisions respectively they might license persons to beg.—By the 27 H. 8. c. 25. the several *hundreds*, *towns corporate*, *parishes*, or *hamlets*, were required to sustain the poor with such charitable voluntary alms, as that none of them might of necessity be compelled to go openly in begging, on pain that every person making default should forfeit 20s. a month. And the churchwardens or other substantial inhabitants were to make collections for them with boxes on *Sundays*, and otherwise by their discretions. And the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful.—By the 1 Ed. 6. c. 3. houses were to be provided for them by the devotion of good people, and *materials* to set them on *work*; and the minister, after the *gospel* every *Sunday*, was specially to exhort the parishioners to a liberal contribution.—By the 5 & 6 Ed. 6. c. 2. the collectors of the poor on a certain *Sunday* in every year, immediately after divine service, were to take down in writing what every person was willing to give weekly for the ensuing year, and if any should be obstinate and refuse to give, the minister was gently to exhort him; if he still refused, the minister was to certify such refusal to the bishop of the diocese, and the bishop was to send for him to induce and persuade him by charitable ways and means, and so according to his discretion to take order for the reformation thereof.—By the 5 El. c. 3. If he stood out against the bishops exhortation the bishop was to certify the same to the justices in sessions, and bind him over to appear there; and the justices at the said sessions were again gently to move and persuade him, and finally if he would not be persuaded then they were to assess him what they thought reasonable towards the relief of the poor, and in case of refusal were to commit him till paid.—By the 14 El. c. 5. power was given to the justices to lay a general assessment, and this hath continued ever since, for the stat. 43 El. c. 2. is only re-enacting of former provisions with very little alteration.

The churchwardens and overseers of the poor of every parish, or the greater part of them, shall by and with the consent of two or more justices in the same county, dwelling in or near the same parish or division where the same parish doth lie, raise weekly or otherwise

Making a rate.

otherwise (by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes, impropriate appropriations of tithes, coal mines or saleable underwoods in the said parish) a convenient stock of flax, hemp, wool, thread, iron and other ware and stuff to set the poor on work, and also competent sums for the necessary relief of the lame, impotent, old, blind and such other among them being poor and not able to work, and also for the putting out poor children apprentices. 43 El. c. 2. s. 1.

1. Who are to make the rate.

Concurrence of the inhabitants not necessary.

The churchwardens and overseers] H. 2. *Ann Tawney's case*. The concurrence of the inhabitants in making a rate is not at all necessary; for by these words the churchwardens and overseers may make one without them. 2 L. Raym. 1013. 2 Salk. 531. 1 Bott. 77. pl. 98.

Mandamus to compel the making a rate.

Shall] And the court of king's bench will grant a *mandamus* to compel overseers to make a rate. *R. v. Barnstable*. 1 Barnard, 137. 1 Bott. 78. pl. 102. *Liddleston v. Mayor of Exeter*. 1 Bott. 77. pl. 97. *R. v. Weobly*. 1 Bott. 112. pl. 135.

But not the making of an equal rate.

But the court will not grant a *mandamus* to make an *equal* rate; because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. *R. v. Barnstable*. 1 Barnard 137. 1 Bott. 78. pl. 102.

2. What are the purposes, and what the time for which it may be made.

43 Eliz. c. 2. s. 2.

The statutes declaring the purposes for which a poor rate may be made are many, in addition the 43 El. c. 2. It has been seen, that by this last mentioned statute the purposes for which a rate might be made were, for setting to work the children of those poor who are not themselves able to keep them: also, all persons not able to maintain them, and using no ordinary trade of life to get their living by; and for putting out poor children apprentices. The remaining sections of this act contain various regulations relating to the conduct and duties of overseers.

9 G. 1. c. 7.

The 9 G. 1. c. 7. relates to the mode in which the poor shall (in particular cases) be relieved; and it also gives the churchwardens and overseers power and authority with the consent of the major part of the parishioners to purchase houses, and contract with any persons for the lodging, &c. of the poor.

The

The 18 G. 3. c. 19. relates to the repayment of constables ^{18 G. 3. c. 19.} for the money expended by them in the relief and removal of poor persons, and of vagrants.

And see also (*infra*) the 41 G. 3. c. 23. s. 9.

In *R. v. Inhabitants of Essex*, *B.* 32 G. 3. It was decided ^{Expences of appeals.} that the expences of litigating the questions of settlement consequent upon the removal of paupers, may be legally allowed out of the parish stock. 4 T. R. 595.

In *Tawney's case*, *Tawney*, being overseer of the poor, laid out his money in the relief of the poor, and was turned out of his office by the justices before the end of the year: by which means he lost the opportunity of making a rate to reimburse himself. Upon this he applied to the court of *K. B.* for a *mandamus* to the churchwardens and overseers to make a rate to reimburse him.—By *Holt* C. J. we cannot order the parish or overseers by a *mandamus* to make a rate to reimburse an overseer, but only to raise money for the relief of the poor; nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he have it; if he do, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. *Tawney* should have done so; he trusted where he need not have done it. He hath not pursued the means the statute gave him, and we cannot relieve him.—And by the whole court; the *mandamus* lies not. 2 Salk. 531. ^{After overseers are out of office a rate cannot be made to reimburse money laid out by them whilst in office, but an overseer may make a new rate for the relief of the poor, and out of that retain to pay himself.}

Also in *R. v. Goodcheap*, *H.* 35. G. 3. it was determined, that where a person is appointed an overseer for four successive years, and does not make any rate in the three first years to reimburse himself what he expends in those three years, he cannot in the fourth year make a rate for that purpose: and Lord *Kenyon* said it was impossible to raise any doubt upon the question. That the overseers ought not to include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed. 6 T. R. 159. 2 Bott. 108. pl. 126. ^{An overseer for several successive years cannot in the last year make a rate to reimburse himself for the preceding years.}

But now it is enacted by 41 G. 3. c. 23. s. 9. that if it shall happen that the churchwardens and overseers or guardians of the poor shall not have collected a sum sufficient for the maintenance of the poor, but have advanced considerable sums for that purpose; they, or any of them, out of any money they shall collect may reimburse the preceding churchwardens and overseers or guardians such sums as they or any of them have heretofore advanced for the relief of the poor of such place during the time that no rate or assessment for the relief thereof has been made, or during the time that any appeal has been depending which affected the whole

of

of such rate or assessment, or upon hearing of which the whole might be quashed; and in default of payment within 14 days after demanded in writing, such preceding churchwardens and overseers or guardians, or any of them, may apply to the next sessions, giving notice in writing of such application to the churchwardens and overseers or two of them; and such persons shall examine the parties and witnesses upon oath, and shall make an order upon the then churchwardens and overseers to pay such sum to the preceding churchwardens and overseers or guardians as they shall think fit, and such sums so ordered may be levied by distress, and by all such other ways and means as the poor rate.

Rate cannot be made to repay money borrowed, though for building or repairing workhouses.

E. 19. G. 3. R. v. Wavill. On a rule to shew cause, why a rate for the relief of the poor of the parish of *Effingham* in the county of *Surrey*, and an order of sessions confirming the rate, should not be quashed, the sessions had refused to state a special case; but the counsel for the appellants being of opinion that the rate would appear to be bad from the title of it, they removed it by *certiorari*, and obtained the present rule. The title of the rate was as follows: "*Surrey to wit. An assessment on all and every the occupiers of lands and houses in the parish of Effingham, for the necessary relief of the poor, and towards payment of money borrowed for repairing and rebuilding the workhouse.*" In support of the rate, it was contended, That the title of the rate would undoubtedly have been good, if it had been only "*An assessment for relief of the poor,*" and that the acts and orders of magistrates (except convictions) are entitled to every intendment from the court that can support them, and therefore that the court would intend the whole money to have been assessed for the first purpose expressed in the title (if it should be thought that the other was not within the statute), and would reject the additional words as surplusage: That if the present objection was founded in law, the proper method of getting at it would have been, by an appeal from the allowance of the overseers' accounts. However, this purpose of building or repairing a workhouse, was manifestly within the spirit of the statute, since it would be in vain to provide for the sustenance of the poor, without being able to furnish them with a lodging. On the other side, it was said to be a general rule without exception, that the parish officers cannot borrow money for any purpose whatever.—*L. Mansfield* was absent.—*Willes J.* Can we reject as surplusage what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney's* case is in point. And as to an appeal against the overseers' accounts, is a parishioner obliged

obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be supported.—*Ashhurst J.* of the same opinion.—*Buller J.* This rate imports to be made for two purposes, and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's case* goes that length; for it is not confined to the *mandamus*. The rule for quashing was made absolute. *Doug.* 111. 1 *Bott.* 102. *pl.* 123.

(2.) *For what time a poor rate may be made.*

Raise weekly or otherwise] *Durrant v. Boys.* A poor rate prospectively: and if it were made for 6 months, it would not (it seems) be bad on that account. 6 *T.R.* 583. 1 *Bott.* 80. *pl.* 111.

M. 12. W. R. v. Audley. A rate was agreed on in 1665 by the inhabitants of *Audley*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt. C. J.* The old rate, however just at first may be unequal now; And therefore the justices cannot make a standing rate. 2 *Salk.* 526. 1 *Bott.* 110. *pl.* 131—272. *pl.* 283.

A standing rate cannot be made by the justices.

3. *Upon whom the rate may be made.*

“By taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish.”

The words “inhabitant, parson, vicar, and other,” include all those who possess property not coming within the several species of it described in the next following part of the same clause of the act: and they are so clear as to need no explanation.

What is designated by the term occupier, and who is the occupier intended by the statute, may be learnt by the following cases. And as to the latter, viz. who is the occupier intended, it will be seen that every person occupying what produces profit, whether to himself or to the person under whom he holds, is the occupier intended by the statute.

Jeffrey's case. *M.* 31 and 32 *Eliz.*—*W. J.* had and occupied or received rent for 30 acres of land in *H.* but was himself an inhabitant of *C.* in the same county, and never did inhabit in *H.* He was assessed to the church rate of *H.* at so much per acre for his land there. And upon application to *K. B.* for a prohibition to stay proceedings against *J.* in the spiritual court for payment of the assessment, it was resolved, that although the house he dwelt in were in another parish,

Occupiers residing in another parish.

parish, yet as he had lands in *H.* in his proper possession and manurance, he was in law a parishioner of *H.* That by manuring lands in *H.* he was by that resident upon it, and was therefore a parishioner of *H.* as to this purpose. But when there is a *farmer* of the same lands, the lessor shall not be charged for them in respect of this rent. 1 *Bott.* 122. pl. 144.

Corporate body. A corporate body is also rateable, as will be seen in the case of *R. v. Gardner*, (*post.*) and others.

Farmer. The farmer or occupier shall pay this tax, and not the landlord, who is never to be taxed for his rent, for then the landlord would pay twice.

And the reason why the occupier is to be so charged is, that the poor rate is not a charge upon the land, but upon the occupier in respect of the land. *Fitz. Gib.* 297. *Case v. Stephens.*

The court will not decide who should be inserted in the rate and who should not.

[*Of every inhabitant*] *T. 19 G. 2. K. v. The churchwardens of Weobly.* The court refused to grant a *mandamus*, directing them to insert particular persons in the poor rate, upon affidavits of their sufficiency and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making the rate, without meddling with the question, Who is to be put in or left out? Of which the parish officers are the proper judges, subject to an appeal. 2 *Str.* 1259. . .

Who is an inhabitant.

By *Sir Anthony Earby's* case, it was determined that no inhabitant is to be taxed by a parish in regard of any estate he hath elsewhere in any other town or place, but only in regard of the visible estate he hath in the town where he doth dwell. 1 *Bott.* 124. pl. 147.

And by *Hollidge's* case, *M. G. 1.*—It was determined that the lessee of a stall in a market town, who came there weekly to the market to sell his wares, was not rateable to the repairs of the church; and that if a man take up his lodging for a week in a town, he shall not be so charged. *Ib.* 123. pl. 145.

Corporations.

In *R. v. Aberavon M.* 45 *G. 3.* Where the question was, Whether a corporation or certain individuals were rateable? It was not doubted that a corporate body might be rated. 5 *E. R.* 453.

If the owner of a house occupy a part thereof only, but his servants occupy other parts, and no one reside in the house but a poor person per-

R. v. St. Mary the Less, Durham, M. 32 *G. 3.* Was an appeal for being overrated for the whole instead of a part of a house; the sessions amended the rate, and also stated, that the appellant purchased the premises and repaired them, but neither he nor any other person resided therein, except as hereafter mentioned, but he kept the key. In one of the rooms the appellant kept a lathe for his amusement, and

had sometimes a fire in that room, and three chairs and a table; and in another room he kept corn for his horse; and he also occupied the garden, worth 40s. a year, and the gardener sometimes put his flower pots, shrubs, &c. and some of his working tools, into another part of the dwelling house, where other lumber was also put, but no person had ever slept or lodged in the house, nor had any furniture been kept there, (except as above). The appellant, out of charity, had permitted a poor man and his wife to live rent free in the kitchen, between which and the rest of the house the door of communication was stopt up. The stable had not been for upwards of two years used for any other purpose than as a dog-kennel. *By the Court.* As this person occupied the garden and part of the house, his servants other parts, and a poor man another part, but those occupations were not distinct from his own, he ought therefore to be rated for the whole, for it would be attended with great inconvenience to have to inquire in each particular case what rooms of a house the owner occupied before he could be rated. 4 T.R. 477. 1 Bott. 120. pl. 142.

mitted to do so out of charity, the owner is rateable as occupying the whole.

In *R. v. Aberystwith*, M. 49 G. 3. The appellant being surgeon of a militia regiment, was occasionally absent from home, and left an assistant in a part of his house: his wife and daughter also were absent, and the assistant had only the use of the shop, the remainder of the house being completely parted off from it. The garden was taken care of by a person paid by the appellant, and the person with whom the key of the house was left, permitted a friend of the appellant's and his servants to lodge there. The house was always ready for the appellant's return. The court decided that such person was rateable for the whole house, for that he must be taken to have been, under these circumstances, the occupier of the whole. 10 E.R. 354.

Who shall be said to be a beneficial occupier, and, as such, to be rateable to the poor rate? In *R. v. Waldo*, T. 23 G. 3. it appeared that Mr. Waldo, about 16 years before, pulled down a house for which he was rated to the poor 8 guineas a year, and built on the same spot a new one, in which 10 poor girls were educated maintained and brought up on his charity; he provided a woman to superintend and instruct them. She and the 10 girls were the only inhabitants, and the house was solely appropriated for this purpose: Mr. W. was rated for this house. L. Mansfield: Mr. W. makes no profit of this building; and it is sufficient that this is so in fact, and the profit is in fact here applied to public and charitable uses. Cald. 358. 1 Bott. 166. pl. 193.

A person who builds an almshouse is not rateable, if no profit be made of it by him.

The preceding was a case where the person dedicating the property to charitable purposes, and making no profit of it, was

was held not rateable for it.—In another class of cases the question has been, Whether the occupants themselves of such property were rateable?

Persons living on a charitable foundation for their own benefit, are rateable.

As in *R. v. Munday* and others, 7. 41 G. 3. In which it appeared that the persons rated were the objects of a charitable foundation, in the actual occupation of the almshouse and charity lands, and of certain stock upon the same, (being the increase of stock originally given with the house, &c. by the will of the founder,) together with a certain wood, which they were bound to fence at their own charges; and also that they were liable to be dismissed whenever they infringed upon the rules of the foundation; and that they were maintained solely by this charity. Under these circumstances the court held that these persons were justly rated; for that the 43 *Eliz. c. 2.* is general, the rate for the relief of the poor being to be levied upon every occupier of lands, houses, &c.: and there is no exception of land devoted to charitable purposes. And that in the present case there was a beneficial occupation.—1 *E. R.* 584. 1 *Bott.* 223. *pl.* 224.

There is another class of cases in which the question has arisen upon the rateability of hospital lands, and the hospitals themselves, which have been determined upon the same principle, viz. Whether there were a beneficial occupation or not?

Hospital lands are rateable.

In *E. 1 Ann.* By *Holt. C. J.* Hospital lands are chargeable to the poor, as well as others; for no man by appropriating his lands to an hospital can exempt them from taxes to which they were subject before, and throw a greater burthen upon his neighbours. 2 *Salk.* 527. 1 *Bott.* 125. *pl.* 154.

The officer of a college is rateable for the apartment he inhabits in the college.

In *Ayre v. Smallpeace*, 24 G. 2. It was decided that the comptroller of *Chelsea* college, residing in the college, was rateable to the poor of the parish, for having apartments *distinctly and separately to his own use.* 1 *Bott.* 131. *pl.* 165.

Those parts of a lunatic hospital which are appropriated to its particular objects are not rateable, but such as are occupied by others, (excepting servants who attend for their livelihood), are rateable.

But in the case of *St. Luke's* hospital for lunatics, *M.* 1. G. 3. it appeared that certain lands were demised to certain lessees for the purpose of erecting an hospital for lunatics: that 29 houses, standing upon these lands, were pulled down, and the hospital erected: that the whole hospital was divided into cells for the lunatics, offices for their sustentation, &c., and apartments for the servants who were hired to attend them: and that the whole was supported by voluntary contributions; and that *J. M.* one of those who were rated was the principal hired servant, living in the hospital, and that the others who were rated had not nor could have any benefit from the possession or occupa-

occupation thereof. Lord *Mansfield* delivered the opinion of the court. He said, cases of this kind must depend on the nature of the respective hospitals. That proprietors of lands might convert them into a state in which they could not be rated to the poor. That nominal trustees could not be rated; that servants could not be rated excepting for their own particular apartments, and it was not here stated that there were any such; and that the *objects* of this charity certainly could not. That, therefore, as no occupier could be found to be rated, there could be no rate at all. 2 *Burr.* 1053. 1 *Bott.* 132. pl. 168.

In *R. v. St. Bartholomew's the Leys*. T. 9 G. 3. It appeared that houses were pulled down, and upon the site of them several buildings were erected, and an area was inclosed for the use of the hospital. The mayor and commonalty of London, (being the governors of the hospital,) were rated to the poor rate in respect of the said buildings and area.

The rate must be charged upon the occupiers and the governors of an hospital, or the poor persons, or the servants, are not such occupiers as can be rated.

By Lord *Mansfield*. The poor rate must be charged upon the occupiers. In the case of *St. Luke's* hospital and in that of *Chelsea* hospital, the officers were rateable as occupiers. Here the corporation *de facto* are not, *de facto*, the occupiers. The poor are occupiers; but they are not rateable. 4 *Burr.* 2435. 1 *Bott.* 139. pl. 172.

T. 14 G. 3. *R. v. Gardner*. The master and fellows of *Catherine Hall, Cambridge*, purchased several houses, and pulled them down, and converted part of the ground on which the said houses had stood into an area, and planted the same with trees for ornament. The parish assessed them for the same to the poor rate. The questions were, Whether the master and fellows, being a body corporate, were liable to be rated, and whether the ground, as it was in its converted state, could be rated?—In support of the rate it was argued, that corporations having lands may be rated, and are to be considered as *inhabitants* in respect of such lands. *L. Coke* (2 *Inst.* 703.) in his exposition of the statute of 22 H. 8. c. 5. for the repair of bridges, commenting upon the word *inhabitants*, with respect to what persons are included under that description, says, every corporation and body politic having lands which they possess and have in their own hands, are *inhabitants* within the purview of the said statute. And in the case of *Thursfield v. Jones* (1 *Jones*, 187.) the court held, that the master and wardens of the company of wax-chandlers were chargeable to the repairs of the church in respect of their corporate lands. And no reason can be given why they are not equally so under the statute of 43 *Eliz.* for the relief of the poor.—Against the rate it was insisted, that corporations are not rateable, because

A corporate body are occupiers and inhabitants for the purpose of being rated, and the master and fellows of a college are therefore rateable as a corporation.

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L. Mansfield : The question is, Whether in
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bridges and of *churches*, they are equally so b
Elizabeth in respect of the *poor*. As to the o
that this area yields no profit, and therefore
be rated, the answer is, that the value is in
of the assessors ; and if the college think them
they have their remedy by appeal. — Mr. J.
idea but that the corporation may be occ
to the remedy of levying a duty upon a c
books all agree that it can be levied, thoug
the mode. — *Sheppard*, in his treatise upon co
“ If a sum of money be to be levied upon a
“ may be levied upon the mayor or chief
“ upon any person being a member of the
But in the case of the city of *London* concern
“ *London* is different

fore the idea that a corporation is not liable to be rated or amenable by process in respect of a rate is not well founded. Besides, by the act of 17 G. 2. c. 38. the remedy of distress is extended beyond the particular parish into other precincts, and even into other counties. So that their property is answerable, though they cannot personally be punished.—The other two justices concurred. 1 Bott. 143. pl. 178.

So in *R. v. John Catt*. T. 35 G. 3. it was determined that the master of a free-school, appointed by the minister and inhabitants of the parish under a charitable trust, whereby a house, garden, and other property, were assigned for the use and habitation of the master and his family freely without payment of any rent, income, gift, sum of money, or other allowance whatsoever for or out of the same, for the teaching of 10 poor boys, of the inhabitants of the parish; was rateable to the poor for his occupation of the same. 6 T. R. 332. 1 Bott. 213. pl. 217.

A school-master occupying a house and garden belonging to the school, is rateable, although they were held by him as a recompense for teaching, &c.

And Lord Kenyon said that the cases of Waldo, and of St. Luke's hospital were determined on the principle that no beneficial occupier could be found.

The next class of cases in which the question of beneficial occupancy arises, consists of those in which there is an occupation for a particular purpose, or by virtue of some office.

H. 17 G. 3. *Old Windsor v. Mathews*. Samuel Mathews was rated to the poor rate for a keeper's lodge in Windsor Great Park, and two acres of land which he occupied as one of the keepers of the said park, which rate was confirmed at the sessions.—And by the court it was determined, that royal palaces, in the occupation of the royal family, are not rateable to the poor; but the servants occupying house and land belonging to the crown, whether they pay for the same by rent or by service, are rateable. Cald. 1. 1 Bott. 151. pl. 181.

Royal palaces in the occupation of the royal family are not rateable, but servants occupying house and land belonging to the crown are rateable.

T. 26 G. 3. *L. Bute v. Grindall* and another. This cause was tried at the assizes in Surrey before Gould J. When the jury found a special verdict, which stated, *inter alia*, that L. Bute was duly appointed ranger of New Park near Richmond, and had granted to him the custody of the houses, lodges, &c. and also the *herbage and pannage of the said park*; That some part of the park is inclosed land, some part thereof meadow, and some part arable land and sown with corn, ryegrass, and clover, in the ordinary course of husbandry: That the meadow has been always mowed and the hay thereon made by persons paid by the king, who also found the hay-feed; that 66 loads of hay when made have been always carried by the king's waggons into the park for the deer, and

A beneficial occupier of the king's lands, whether by gift or for wages, is rateable for the same.

the overplus was stacked up for the use of the king's horses, and the ranger's horses, and ate by them, but never any sold : That when the arable land was sown with corn, the ranger found the seed ; and when with rye-grass or clover, the king found the seed ; and was manured, ploughed, and sown by the king's servants and horses, and reaped by the ranger, and sold for his benefit, and the king had no part ; that the straw was used for thatching the hay ricks, and by the king's cart horses : That *the profits arising to the ranger from the said lands are worth 100l. a-year* ; but the herbage and pannage of the park have yielded no profit to the ranger. — By *L. Mansfield* : The question is, whether the plaintiff is rateable at all ? Not for how much or in what proportion. It is clear he is not rateable for the herbage and pannage, *because they yield no profit* ; but there is a parcel of land inclosed which he sows, and afterwards reaps the corn from, and the profits arising to the ranger from the said lands, amount to 100l. a-year ; therefore he is occupier ; and *quo nomine* occupier can make no difference whether by gift or for wages. — *Buller J.* It is immaterial what interest the occupier has in the lands, whether he holds as tenant at will, or any other tenure : It is not necessary to inquire into the occupier's title. 1 *T. R.* 338. 1 *Bott.* 173. *pl.* 196.

Stables rented by order of the crown, for the use of a regiment, are not rateable.

Lord Amberst v. Lord Somers and others. *E.* 28 *G.* 3. By warrant under the king's sign manual, a lease was entered into by *Ld. R. Bertie* with one *A.* by which certain buildings were covenanted by *A.* to be built by him as a riding school, &c. for the use of a troop of the horse-guards. *Ld. Amberst* succeeded *Ld. R. Bertie*, and had possession given him of the school, &c. and the buildings were used always for the purposes of the troop, and never in any manner for the private benefit of *Ld. Amberst*. The rent was paid by stoppages from the pay of the troop. By *Ashburst J.* It is admitted that neither the possessions of the crown, nor of the public, are liable to be rated to the poor ; and as this property falls within one or the other of these descriptions, it is not rateable to the poor. And by *Buller J.* In this case the plaintiff did not contract as general lessee, but merely for the benefit of the public, by order of the crown ; and he made no use whatever of the stables. Therefore he cannot be considered as the occupier. 2 *T. R.* 372. 1 *Bott.* 184. *pl.* 199.

A master gunner stated to be occupier of the King's battery house, is rateable.

R. v. Hurdis. *M.* 30 *G.* 3. The appellant objected to the rate because one *Wood*, gunner of the King's fort and battery at *S.* who was a servant to his Majesty, and not in his own right the occupier of the dwelling house thereto belonging, and who therefore ought not to have been charged in the rate, was inserted therein, and charged as the

the occupier of the battery house. At the time of making the rate he was a head or master gunner, and acted as such at the fort or battery of S. The fort and battery-house are the property of the crown; and a master gunner is an officer appointed by the crown, and removeable at pleasure. *Wood* being so employed, occupied the whole of the house, except one room; the furniture belonged to him. *L. Kenyon Ch. J.* I do not feel that my opinion upon this subject militates against any decided case, but I shall determine upon the ground of positive law, as it is laid down in the 43 *Eliz.* which subjects every occupier of lands, houses, &c., to be rated to the relief of the poor. Now it is expressly stated in the case that *Wood was the occupier of the battery-house*; and though perhaps it might have been contended below, that he was not the occupier, in the legal sense of the word, yet the finding of the sessions precludes that question here. It is not, however, a general position, that a servant of the crown occupying a house in respect of his office, is not rateable for it. Soldiers indeed cannot be said to be the occupiers of their barracks, in the legal sense of the word, they are no more than mere servants. Therefore *Wood* was properly rated. 3 *T. R.* 497. 1 *Bott.* 187. pl. 202.

Note. In the subsequent case of *R. v. Terrot*. Lord *Ellenborough* intimated that if soldiers occupied in barracks, beyond what was strictly necessary, they would be rateable.

R. v. Terrot. *E.* 43 *G.* 3. The appellant was an artillery officer. He had his quarters in a building fitted up at the expence of the crown. There were several apartments beyond what were necessary for the regimental business, and he resided in them with his family; the usual barrack furniture was provided by the crown. He was rated in respect of these apartments. By Lord *Ellenborough Ch. J.* The principle of the subject is, that if the party have the use of the building, or other subject of the rate as a mere servant of the crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of, or emolument resulting from it in any personal and private respect, then he is not rateable. The property of the crown in the beneficial occupation of a subject, whether he be a civil or a military officer of the crown, is equally rateable. But if the use of or residence upon the property be either as the servant of the crown, and for public purposes only, or as a mere public officer or servant, or of any other description, the parties having the use of the property merely for such purposes; are not rateable; because the occupation is throughout that of the public, and of which

ies of
which
& not

R. v. Woodward and another. *M.* 33 *G.* 3. Trustees of a quaker meeting-house were rated the meeting-house, the basement story of which was divided into many small rooms, one of which is occupied by a person called the door-keeper, whose business it is to open the house when necessary, and keep the house clean, for which he has a small salary. The other apartments are either not occupied, or are only used for the use of poor persons maintained by the quaker meeting-house, which is solely appropriated to religious purposes. The trustees, the persons rated, do not receive any rent for the same. No pecuniary advantage is made of the meeting house. *The court* said, it was not possible to support this rate on the trustees who lived in the premises; and that there was no occupation nor any profit made of it. *5 T. R.* 79. *pl.* 212.

the

R. v. Commissioners of the Navigation of the River of Sluice to Stanground Sluice. *T.* 32 *G.* 3. Trustees were assessed for the tolls of a sluice, which had been confirmed at the sessions. It appeared that the tolls were directed by the act of parliament passed for the regulation of the sluice, "to be applied for the several purposes of the said act, and for no other whatever." *Per Lord* It is not sufficient to point out property which is not occupied; there must also be some beneficial occupant. Corporations may be assessed for the tolls.

there was no occupier of the house at present. 5 T. R. 79.
1 Bott. 205. pl. 212.

4. What property is rateable :

- (a) Stock in trade.
- (b) Household furniture, and money, and funded property.
- (c) Salaries, and wages of labour, &c.
- (d) Tithes.
- (e) Manors, and their profits.
- (f) Mines.
- (g) Woods.
- (h) Commons, way leaves.
- (i) Double rating.
- (k) Of increased value, and herein, of docks, tolls for navigation.

The court of king's bench, from the difficulties attending the matter in practice, have all along been averse from delivering any opinion upon the general question, Whether, or how far, *personal estate* is liable to be rated to the poor; but have determined the several cases upon their own particular circumstances, or quashed the rates for insufficiency in point of form.

H. 5 An. 2. v. Barking. Upon quashing of several orders made relating to the poor rates, the matter in difference was referred to the determination of the L. Ch. J. Holt : who having heard all the parties, and they not seeming satisfied with his opinion, they signified their consent in writing to submit this question to the opinion of the judges of the king's bench : to wit, Whether a *farmer for his stock* shall not be chargeable and taxable to the poor rate, as well as a tradesman for his *stock in trade*? And the other three judges were of opinion that a farmer for his stock is not taxable, contrary to the opinion of Holt Ch. J. Whereupon the following rule of court was made : " Upon mature deliberation, it is considered by the court, that a farmer is not taxable to the poor rate for his stock ; and that a tradesman is taxable for his stock in trade." [Or, as it is expressed in the record, *Quod firmarius, anglice, a farmer, non erit onerabilis et taxabilis ad ratas pauperum pro pecuniis, anglice, stock ; et quod artifex, anglice, a tradesman, est onerabilis et taxabilis pro pecuniis, anglice, stock, in arte, anglice, trade.* 2 L. Raym. 1280. 1 Bott. 126. pl. 156.

E. 10 G. 3. R. v. Witney in Oxfordshire. An appeal against a rate for the relief of the poor of the parish of Witney, for that there were within the said parish many manufacturers and other traders, who employ under them many servants and apprentices, and were not assessed in the

Personal estate.

A farmer is not rateable for his stock.

Stock in trade of tradesmen, &c. rateable. Quære If property which the sessions consider to be rateable be not rated, they

ought to amend the rate by inserting it, and not to quash the whole rate.

saïd rate for their stocks in trade; the saïd rate was quashed on account of such omission, subject to the opinion of the court of king's bench on the following facts: It appeared there have long been many such manufacturers and traders within the saïd parish, who have been constantly assessed to the *land tax* for their respective stocks in trade, but none of whom have ever been charged with the payment of any rate for the relief of the *poor* on account of such *stocks*: That as well the saïd manufacturers and traders as all other occupiers of lands and houses within the saïd parish, have been and constantly are assessed in this and all former rates for the relief of the poor, as well as to the *land-tax, for the lands and houses* in their respective occupations.—The counsel who argued in support of the order of sessions cited and relied upon the case of *Q. v. Barking* (above). But the court were not satisfied of the authority of this case. Lord *Mansfield* expressly called it a strange case. They observed, that the opinion of three of the judges was only saïd to be, that a farmer for his stock was not taxable, contrary to the opinion of *Holt Ch. J.* But it doth not appear that a question was directly put to them, Whether a tradesman was taxable to the poor for his stock in trade? The court however gave no explicit opinion upon the merits of the present case, though they seemed very far from allowing that a tradesman is rateable to the poor for his stock in trade.—But here, the order of sessions is clearly wrong upon the face of it; because they ought not to have quashed the whole rate, but to have added those persons, and that property, which it was thought were illegally omitted. And the order was quashed. 5 *Burr.* 2634. 1 *Bott.* 141. *pl.* 176.

Same point, Whether stock in trade be rateable. *Quære?*

T. 15 G. 3. R. v. Ringwood. On shewing cause against quashing an order of sessions which had quashed a rate for the relief of the poor of the parish of *Ringwood*, the sessions order stated, That three persons were possessed as coparceners of stock in the trade and business of common brewers and maltsters in the saïd parish, to the value of 4000*l.*; for no part of which the saïd coparceners, or any of them, were or was in the saïd rate assessed to the relief of the poor of the saïd parish. And it did not appear to this court that stock in trade had ever before been rated in the saïd parish. Therefore the court adjudged that the saïd recited rate ought to be quashed, and the same was quashed accordingly; and a new rate ordered to be made immediately for the relief of the poor of the saïd parish, by the churchwardens and overseers of the poor of the saïd parish of *Ringwood*.—On hearing the cause, the court declined entering into the merits; but as to this particular case, *L. Mansfield* saïd—I have no doubt what is to be done with

with it, as the authority of *R.* and *Witney* above is precisely in point. (I think the justices would not have done very wrong, if they had acquiesced in the practice which has obtained ever since the statute of 43 *Eliz.* of not rating this species of property. The case of *R.* and *Witney* was determined upon this single ground, that the justices in session should not have quashed the whole rate, but should have amended it by inserting the particular persons and that property which was omitted, and which they thought rateable. So here, the justices at sessions should have amended the rate, if they thought this properly rateable; and then on attempting to do it, they would have discovered the wisdom of conforming to the practice, which they expressly state in the case of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would found out the sense of not rating it at all; especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them. And by the court, the order of sessions was quashed. *Cowp.* 326. 1 *Bott.* 148. p. 179.

H. 17 G. 3. R. v. the Overseers of Andover. On a rule to shew cause why an order of sessions made for rating several tradesmen for their stock in trade towards the relief of the poor should not be quashed, the case was, The overseers made a new rate, in which they omitted to rate tradesmen for their stock, which had been formerly rated in that parish. Upon which the other inhabitants of the parish appeal to the sessions. And the sessions make order whereby they adjudge, "That Mr. *Joseph Wakefield* is a proprietor of stock in trade as draper in the parish of *Andover*, to the amount of 300*l.* and that the profits of that trade is 15*l.* a-year; and that he ought to be rated towards the relief of the poor of the said parish in respect of such stock and profits 7*l.* each rate, in the rate so appealed against." And there was the like adjudication as to several other tradesmen. And the court ordered the said rate to be amended, by putting into it a rate on the said several tradesmen, in respect of such their stock and profits.—It was objected, that this order on the face of it was bad, inasmuch as it did not appear, that the several persons whose names were added to the rate by order of sessions had notice of the appeal, or litigated the question at the sessions. They were therefore without redress; for

If personal estate be rateable, it must be local visible property within the parish.

The sessions cannot add to a rate the names of those who have not notice of the appeal, or litigated the question at the sessions.

H. 22 G. 3. R. v. Rodd. Upon the appeal of *James Rodd* against a rate made for the relief of the poor of the borough or parish of *Bridgwater*, wherein he was charged four shillings in respect of his *stock in trade*, above what he was therein charged for his house and shops, and other real property.—The sessions confirmed the rate, and stated specially—That within the said borough, it had been usual ever since the existence of rates for the relief of the poor, to assess the inhabitants of the said borough, *for and in respect of their personal property, or stock in trade*; and amongst them such as have been of the same trade, and of similar circumstances with the appellant. The question therefore submitted to the court was, Whether the said *Rodd* were rateable for his *stock in trade*? It was admitted that it was not possible to distinguish this from the above case of *R. v. Hill*. By the court: Rate affirmed. *Cald. 147. 1 Bott. 161. pl. 189.*

H. 35 G. 3. R. v. Dursley. J. Harris appealed to the *Gloucester* sessions against a poor rate for the parish of *Dursley*, upon the following ground amongst others, That *Messrs. Tippots and Co.* and several others, were not rated for their goods, stock in trade, and personal effects, and the court being of opinion that stock in trade and personal property ought to have been rated, quashed the rate.—The above case of *R. v. Hill*, and the case of *R. v. Madden (a)*, were cited to shew that stock in trade is rateable.—By *L. Kenyon Ch. J.* There is no doubt but that personal property is rateable; but the difficulty in this case is to know for what these persons should have been rated. They appeared indeed in the possession of stock in trade, some to the amount of 100 l. others 50 l. but the sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or if it did, whether or not it produced profit, or was not liable to incumbrances equal to the value of the property itself. The bare possession of personal property is, to be sure, evidence from which the justices may draw the conclusion that the possessor should be rated; but here the justices, after stating the possession, have raised a doubt respecting other facts which they should have inquired into and determined upon. They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated. Order of sessions quashed. *6 T. R. 53. 1 Bott. 210. pl. 215—290. pl. 302.*

Personal property is rateable and the bare possession of it evidence from which the justices may draw the conclusion, that the possessor is rateable.

(a) *Post*, under this head.

In

In *R. v. Sherborne*. T. 47 G. 3. Two persons appealed against a poor rate wherein they were rated for *stock*, meaning stock in trade. It appeared that the appellants were silk throwsters, occupying certain buildings in *Sherborne*, in which persons were employed by them to clean, spin, and throw silk sent them in a raw state from *London* for that purpose. The silk after being so improved was sent back, and they were paid for the process. The rate was imposed in respect of the profits derived from this silk as *stock*. But the court decided at once that it was impossible it could be considered to be stock as a subject of rating. 8 E.R. 537.

Household
furniture.

In *R. v. White*. T. 22 G. 3. It was ruled that household furniture was not rateable to the poor. 4 T. R. 771. 1 Bott. 202. pl. 211—89 pl. 117.

Money at
interest.

(b.) And also that money, out at interest or not, is not rateable.

In *R. v. the Churchwardens and Overseers of St. John's Maddermarket in Norwich*. H. 45 G. 3. A. S. appealed to the sessions against 100*l.* stock charged upon her for the relief of the poor, which appeal was allowed. Upon a case stated it appeared that the rate was made by virtue of a local statute (10 *An. c. 6.*) which enabled the overseers &c. of that parish "to assess a certain sum upon the inhabitants &c. and on all persons having and using stocks and personal estates in the said parish or having money out at interest." That "money out at interest as well without as within the said city and county of Norwich," had been constantly assessed to the poor's rates. That the appellant was possessed of money vested in the public funds, or on government security, and then standing in her name in the books of the governor and company of the bank of England in the 5 per cent. bank annuities. And the question submitted was, as to the rateability of this stock.

Per L. Ellenborough C. J. Money out at interest, however the lender may stipulate not to call for the principal for a given period, is still a loan of money, with forbearance for a certain time. It implies that the principal is to be repaid at some time or other, when the lender will be entitled to receive it as money, and not a substitute for the principal in a mere annuity. But with respect to stock, the payment of the principal can never be compelled. All that the government engage for is a perpetual annuity redeemable at their own will and pleasure. If this then be not rateable under the local act, neither is it so under the 43 *Eliz. c. 2.* (the only other statute by which it could be rateable) not being local visible property within the parish. It is therefore not rateable.

able under either statute. The other judges agreed. 6 E.R. 182.

(c.) *The next division is of those cases in which profits are earned by personal labour, and are themselves merely personal.*

R. v. Shalfleet. Sherrington's case, H. 7 G. 3. It appeared that the appellant inhabited a tenement at S. for the purpose of superintending the saltworks there, for which he received a salary of 40*l.* per ann. from the government. And that he was rated for this salary. And Lord Mansfield said "we are all of opinion that this is *not* such a species of property as can be rated to the relief of the poor, as "personal estate within the parish." 4 Burr. 2011.—1 Bott. 138. pl. 171.

Salaries are not rateable.

In *R. v. White* and others, T. 22 G. 3. It was also held that a collector of the customs for his salary, or a captain in the navy, a merchant's clerk, or the master of a merchant vessel, for their pay, are not rateable to the poor. 4 T.R. 771. 1 Bott. 202. pl. 211—89. pl. 117.

In *R. v. J. Startifant.* M. 37 G. 3. The defendant appealed against a poor-rate in which he was assessed in respect of his profits and fees of his profession as an attorney. And the court, without hearing any argument, said that such a rate could not be supported. 7 T.R. 60. 1 Bott. 217. pl. 219.

So the profits of an attorney.

(d.) *The next question of rateability arises upon tithes.*

R. v. Turner, H. 4 G. The defendant being assessed towards the poor rate for his tithes as vicar, appealed to the sessions, where he was absolutely discharged.—But by the court: As vicar he is chargeable by the 43 *El.* and the sessions hath only power to moderate, but not discharge. And the order of sessions was quashed. 1 Str. 77. 1 Bott. 126. pl. 158.

The vicar is chargeable in respect of his tithes.

And a parson who lets to each parishioner his own tithes, is properly the occupier, and ought to be rated. 16 *Viner*, 427.

The parson who lets his tithes is occupier, and should be rated. But if there be an under lease, the first lessee is rateable.

But if a parson make a lease of the tithes to one person, who afterwards lets the same to each parishioner, there the lessee is the occupier, and ought to be taxed. So if a man has a wood, or standing corn, and sell the same standing, the vendor is the occupier, and shall be taxed. 8 *Mod.* 61.

T. 8 G. R. v. Lambeth. The parson lets his tithes to farm; the farmer agrees with the tenant of the land that in consideration of his paying so much he shall retain the tithe and gather in the whole crop without dividing: Which of the two is chargeable to the poor-rate, as occupier of the tithes, was the question. The sessions discharge the lessee of the parson, and tax the tenant of the land.—But by the court: The order must be quashed. The farmer of the tithes is *primâ*.

The farmer of tithes who lets the tithes again, is *primâ facie* liable to the poor rate.

prima facie liable to the poor rate; and therefore unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and nobody can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol cannot enure as an under-lease of a thing that lies only in grant. Suppose it was the case of underwoods which are sold standing, and the vendee grubs them up; can it be imagined that makes him the occupier? Or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe; therefore there being no colour to charge the tenant of the land, the order of sessions must be quashed. 1 Str. 525. 1 Bott. 127. pl. 160.

None be entitled to the tithe of all fish caught in the parish, he is rateable in respect thereof.

T. 29 G. 3. R. v. T. Carlyon, clerk, and another. Upon an appeal to the quarter-sessions in Cornwall against a poor rate, the same was confirmed, subject to the opinion of the court, on a case stating, That the appellants were the proprietors of the tithe-sheaf of the parish of Paul, and also of one-tenth of all fish caught, and brought on shore within the parish, for which they and their tenants were rated. The only question made was concerning the rateability of fish, which being a property yielding a certain annual profit, the sessions confirmed the rate. — L. Kenyon Ch. J. This question is decided by the express terms of the statute 43 El. c. 2. s. 1. which, after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate and appropriations of tithes*, in respect of which the rate is to be made, and indeed the spirit of the law coincides with the words of this statute. For the legislature intended that when rates were made, every person should contribute according to the benefit which he received within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said, that only property which is *visible* should be rated; but

Dilations and other offerings are rateable.

but I think that is carrying the rule of exemption too far; for oblations and other offerings which constitute the rectorial or vicarial dues are rateable.—Order of sessions confirmed. 3 T. R. 385. 1 Bott. 186. pl. 201.

(e.) It has been argued in the following cases, whether manorial profits be rateable to the poor rate.

The overseer of *Stoke Nayland* in *Suffolk* made a rate in which he charged the quit-rents of several manors within the parish; which rate the justices refused to sign, because the quit-rents ought not to be taxed. Whereupon the overseer, on application to the king's bench, obtained a rule to enforce the justices to sign it, which was strongly opposed: but the court ordered the rate to be signed, and a warrant to distrain; so that if any person thought himself aggrieved he might bring an action upon the distress, and the matter in law be brought in question. *Carth. 14 M. 3 J. 2.*

Quere, What quit rents and casual profits manors?

In another like case, *Eyre J.* said, that a quit-rent is not taxable to the poor, for the tax ought to be laid on the occupier. But *Holt C. J.* said it was otherwise ruled in the case of one *Williams* of *Suffolk*. *Comb. 264. T. 6. W.*

Finally in *R. v. Vandewall*, *E. 33 G. 2.* this point came to be fully considered. *S. V.* esq. lord of the manor of *A.* was charged to the poor-rate for the manor itself (exclusive of the demesne lands,) consisting of quit-rents, fines for renewal of copyholds, and other casual fruits and profits: he occupying nothing else in the parish. The justices confirmed the rate. The order being removed by certiorari, it was objected that the lord was not an inhabitant, nor were the rents and profits of the manor rateable under the statute. By *L. Mansfield*. The rents and casual profits of the manor are not rateable to the poor; which he said was so clear there was no need to enter into any reasonings about it; and so far as appeared to the court such a rate had never been attempted before. *2 Burr. 991. 1 Bott. 131. pl. 167.*

The rents and casual profits a manor are rateable to the poor.

Note. In *R. v. Alberbury* (post.) *L. Kenyon* said that the principle the case of quit-rents went upon was, the objection of double rating the same property in the hands of the landlord as well as the tenant.

(f.) The next class of cases regards those adventurers which comes under the denomination of mines.

In *R. v. Cunningham* and others, *M. 45 G. 3.* A rate upon "iron and coal mines" was quashed because iron mines are not rateable to the poor, and therefore ought not to have been rated jointly with coal mines. *5 E. R. 478.*

Iron mines,

In the case of the governor and company for smelting down lead against *Richardson* and others, *M. 3 G. 3.* a point was reserved

Lead mines not rateable.

reserved before Mr. J. *Batburst* at *Carlisle* assizes 1761, which was thus : The defendant had distrained for the poor rate assessed on the occupiers of the *lead* mines lying in the parish of *Alston* ; upon which they brought this action. The case stated, that the plaintiffs were lessees from *Greenwich* hospital ; that they worked the mine, but did not live in the parish of *Alston* ; that the profits of the hospital that year amounted to 1900 l. but those to the plaintiffs, the lessees, were quite precarious and uncertain, and that some years they gained nothing ; that no lead mines had ever been assessed, except in an instance or two since making this distress.—By L. *Mansfield* Ch. J. The question is no more than this : Whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the ore to be raised, is rateable to the poor under the 43 *Eliz.* ? Now nothing can be clearer, than that these mines are not within the *letter* of the statute ; for the legislature could never intend by the word *coal* mines to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal mines* expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them ; as from the nature of working them they are liable to more hazard and expence than coal mines are. And at that time, all copper, lead, and tin mines, in *Derbyshire*, *Cornwall*, and *Mendip* in *Somersetshire*, (which are the only counties where works of that kind were then established) were governed by particular laws ; whereby any stranger conforming to the ceremonies thereby required, was at liberty to work those mines, without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expence, and often ruined the projectors, it is no improbable conjecture, that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this public utility, to exempt them from any other burden or imposition than those that the miners' law had imposed. Indeed, if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land : But that is not the present case. And where the legislature have not imposed a tax, this court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and therefore cannot be rated. Upon the whole, as here might be a very good reason for not making these mines liable, which is fortified by usage, and they are not within the letter of the act, I am clear they are not rateable.—Mr. J. *Denison* was of the same opinion.—By Mr. J. *Wilmot* : There

There is a material difference between coals and other mineral works. Coals are easily found; but a vast deal of time and money is often spent in discovering other mines. The legislature therefore considered how dangerous it would be to discourage these kinds of adventurers, by subjecting them to a tax. Another thing which convinces me that the legislature meant only to include coal mines is, that in the statute of 31 *El.c.* 7. concerning cottages, they have used the words *coal mines and all other mineral works*; which plainly shews, they never understood that coal mines would comprehend other sorts of mines. 3 *Burr.* 1341. *Bl. Rep.* 349. 1 *Bott.* 137. *pl.* 17c.

E. 16 *G.* 3. *Rowls v. Gells.* The plaintiff *Rowls* was lessee under the crown of all lead mines with their appurtenances, within the soke and wapentake of *Wirksworth*, with the *lot* and *cope* within the said soke and wapentake, and was assessed for the same, as for an estate of 500 l. a-year. The duty of *lot* payable to the plaintiff, as lessee of the crown, is the thirteenth dish or measure of lead ore, got, dressed, and made merchantable, at all the lead mines within the said soke or wapentake; and *cope* is, sixpence for every load or nine dishes of lead ore raised at such mines. These duties are paid to and received by the plaintiff, without any risk or expence in working the mines, and in that year wherein they were assessed amounted to the clear sum of 500 l.; but they are uncertain, and vary every year. — *L. Mansfield* delivered the resolution of the court: The poor rate is not a tax on the land, but a personal charge by reason of the annual profits which the lessee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax. For it arises by reason of the land in the parish, and the landlord is never assessed for his rent, because that would be a double assessment, as his lessee had paid before. *Lead* mines are not within the statute of 43 *Eliz.* They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes therefore upon the adventurers would be hard, and they are therefore excused. But he, who in case they do prove of value, receives a stipulated benefit from the profits or value of them, is not excusable on the same ground; and therefore is expressly charged to the land tax, as that falls upon the landlord. He is alike liable to the poor rate for his visible real property in the parish; though, where the poor tax is a charge on the lessee, the landlord doth not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light; because the lord pays, not for that which the lessee or adventurer is excused

The lessee of a lead mine under the crown with the lot and cope is rateable in respect of the lot and cope.

excused from paying for, but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it doth not prejudice or benefit him. But as such obligatory payment is in respect of the land, the landowner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expence, or possible risk. Therefore we are all of opinion that the plaintiff is liable to be rated for this property. *Cowp.* 451. 1 *Bett.* 149. *pl.* 180.

The lessee of a coal mine rateable, although he derive no profit from the mine.

N.B. There was a prospective advantage to be obtained by the lessee, independently of present profits.

E. 34 G.3. R.v. Parrot and others. The defendants are lessees of some coal mines at *Exhall* in *Warwickshire*, and appealed to the sessions against a poor rate, which was there confirmed, subject to the opinion of this court on the following case: The appellants are in possession of the colliery for which they are rated under a lease from Messrs. *Arnold* and *Farmer*, by which they were bound to work the colliery, and to pay a sixth part of the money produced by the sale of the coals got there, without any deduction on account of the expence of working; it was proved that upon an average of the last three years, the appellants paid 3001 l. 15s. 7½d. as a sixth part of the produce of the coals sold, and that they lost two farthings and ½ a farthing on every ton of coals sold: That the colliery always was and still is a losing adventure from the first of their taking it, and that they must have known it at the time they took it, and their inducement for taking it was, that when they had worked out the coal in this colliery, they would be able to get at coal of their own which was adjoining; and that this was a cheaper way of getting at it than any other which they could have adopted. — *L. Kenyon Ch. J.* It is said, that this burden is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord makes so hard a bargain with his tenant, that the latter derives no benefit from the farm, must not the tenant be rated to the poor? The landlord certainly is not liable. This case differs from that of *Rowls v. Gells* (above) in this respect; that was the case of lead mines, which are not rateable under the statute of *Eliz.* and there the question was, Whether or not the lessee were rateable for certain annual profits which he received without any risk on his part? Of the decision in that case it is not necessary for me to

to say any thing at present: I will form my opinion upon that question when it arises again. But here the property is rateable under the express words of 43 *Eliz. c. 2*. It appears in the case that there has been a clear profit of 1000l. a-year since the lease was granted; and the question is, Whether the appellants, who are occupiers of these mines, which it is admitted are rateable property, are or are not liable to be rated in respect of this property? Their objection is, that they have made an unprofitable bargain with the lessors; but we cannot examine into that; it being sufficient to make them liable, that they are the occupiers of rateable property. Order of sessions confirmed. 5 *T.R.* 593. 1 *Bott.* 209. *pl.* 214.

R. v. Bedworth. *E.* 47 *G. 3*.—*J. W.* was assessed for a colliery, as of the annual value of 200 l. at 5 l.: and *W.* appealed against the rate. The sessions struck out of the rate the assessment, and stated in a special case, that the colliery was demised for a term of years to *W.* at 200 l. annual rent, whether coal should be gotten or not: and that the coals were totally exhausted, and the mines ceased to be worked. In the argument the case of *R. v. Parrot* (*supra*) was referred to; in which, though the lessees of a coal mine worked it at a loss to themselves, after paying their rent, they were still liable to be rated.

Coal mine ceasing to be productive, is not rateable.

Per Lord Ellenborough C. J. In that case the subject matter itself was profitable, and produced value to the owner, though the immediate occupiers derived no profit from it. But here the mine itself is exhausted, the subject matter of profit is gone, although the rent, which was no doubt calculated upon the probable average produce of the whole term, be still payable. But, with respect to the parish, he is only rateable for the concurrent annual value during the period for which the rate is made, and when the thing which he occupies no longer affords any such concurrent value, the subject matter of the rating is gone. 8 *E. R.* 387.

M. 30 *G. 3.* *R. v. St. Agnes.* Two occupiers of rateable property in the parish of *St. Agnes*, appealed against the poor rate, because *J. P. Andrews*, trustee of *J. Enys* a minor, was omitted to be rated for the *see farms of tin* arising out of his premises in *St. Agnes*. And also because *N. Donnithorne* was omitted to be rated for *toll tin* raised in the parish of *St. Agnes*, and to which they are entitled. The rate was quashed at the sessions, subject to the opinion of the court on the following case: *J. P. Andrews* as trustee of *J. Enys* is entitled to a certain dish or measure arising out of certain lands and tin bounds in *St. Agnes*, called *toll and farm tin*; which toll is one 15th part of all the tin gotten

Toll tin and farm dues are rateable.

in the lands of *J. Enys* within the parish of *St. Agnes*; and which said *farm tin or due* is one 12th part, after the said 15th part is deducted, for toll of all such tin so gotten within the tin bounds in the parish; and which said dues or duties are due and payable by the laws and customs of the *Stannaries of Cornwall*, free and clear of all risk and deductions whatsoever; but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. And *N. Donnithorne* is entitled to a certain dish or measure called *toll tin or dues*, arising out of certain lands in *St. Agnes*, and due and payable in the manner before stated, and which toll varies, and is uncertain, but also produces a considerable sum annually.—*Morris* moved, that this case might be sent down to the sessions in order that *Andrews* and *Donnithorne* should be made parties to it. For though it was held in *R. v. Maddern*, that a rate might be quashed on an objection similar to the present, without giving notice to the party whose name was omitted; yet in this instance the parties below had colluded together, and had consented that the rate should be quashed, subject to the opinion of this court whether *Andrews* and *Donnithorne* ought to be rated on the statement of a case on which they had not been heard.—But refused by the court.—*L. Kenyon*, C. J. said he approved of the cases of *Reynolds v. Gells*, and *R. v. Maddern*, though these two persons would not be precluded from objecting to their being charged in any future rate on any ground they might think proper. But they were not parties to this case, and could not make any objection to the order of sessions. Order of sessions confirmed. 3 T. R. 1 Bott. 188. pl. 263.

Lime works are rateable in the hands of the occupier.

R. v. Alberbury. T. 41 G. 3. An appeal was made against a rate, and the rate was amended by the sessions by adding the names of certain persons as joint occupiers of certain lime works. The risk of working the limestone was stated to be great, and it was also stated that they paid a certain sum *per annum* as a royalty to the proprietors of the quarry. And the question for the court was, The rateability of these persons for these lime works. And *per Lord Kenyon* Ch. J. The only question is, Whether the persons named in the rate are rateable in respect of that species of property? The landlords, who derive a certain profit upon it in the nature of rent, could not have been rated, because that would be to rate the subject matter twice. But what possible objection can there be to the rate upon the occupiers. There is no pretence to call this a mine. But the land itself is convertible into a source of profit; said indeed to be uncertain, but it is well known to be productive, and the very statement of the case shew it to be so. And as

to the quantum, that must be settled by the sessions.

1 E. R. 534. 1 Bott. 223. pl. 223.

A slate-work is rateable, according to *R. v. Woodland*,
2 E. R. 164. 1 Bott. 228. pl. 225.

And a potter's-clay pit is also rateable according to *R. v. Brown*. T. 47 G. 3. 8 E. R. 528.

R. v. Mirfield. T. 48 G. 3. The sessions quashed a rate upon appeal, and stated that the woods which were the subject of the rate were underwoods, which were usually cut down once in 21 years, and, then and not before, were profitable to the appellant. That these underwoods were then standing to complete the 21 years' growth. And the question was, Whether these woods were *saleable underwoods* within the 43 *El. c. 2.* and liable to be rated every year, according to the annual average, or only *when cut down and sold*.
When saleable under woods are rateable.

Lord *Ellenborough* C. J. delivered the opinion of the court, after consideration, that *saleable* means such as are intended for sale, in contradistinction to such as are to supply the land with estovers for fuel, and other purposes of the estate; and are therefore rateable at all times, according to their value, in exact proportion with the rest of the property in the parish. The objection to this is, that the property ought not to be rated until the produce of it has been severed from the land, and until it has supplied the occupier with the means of paying. But it is not necessary that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made; but the property is at all times rateable according to the improvement in its value, or in the rent which might fairly be expected from it. The property of these underwoods is at all times liable to be rated whenever rates are made. Rate confirmed. 10 E. R. 219.

As to commons, it has been decided that commoners are rateable under some circumstances in respect of their commons.

R. v. Watton. M. 45 G. 3. In this case *W.* appealed against a rate, because *E. H.* and others were not rated for certain common lands upon which they had commonable rights, which rights they enjoyed and used. The justices confirmed the rate. The case stated, that the mayor, &c. of *Huntingdon* were the owners of these lands, which were used as a common of pasture, and stocked by such resident burgesses as thought proper to stock, under certain restrictions. That some of the resident burgesses stocked fully, that others did not, and some not at all. That in the latter case an annual payment was made by those who did stock to those who did not, and that *E. H.*, &c. were resident burgesses and did stock.—In the course
Commoners are rateable in respect of their right of common, if they exercise it.

of the argument it was observed by *Lawrence J.* that the word *occupation*, properly speaking, implies *possession*.

Quære, Whether
a common in
grofs be rate-
able.

By Lord *Ellenborough C. J.*—This is not an incorporeal hereditament. The corporation are the owners in fee of the land, and they dole it out annually, according to the custom, to certain of the burgesses, such of them as take it paying a certain sum to those who do not turn on any stock. Then when the number of those who stock is ascertained, what is there to distinguish them from other tenants in common. It has been decided that a common in grofs is a tenement, and it should seem from thence that it is rateable. But I consider this not as an incorporeal hereditament, but as a corporeal tenement, of which the several burgesses who stock are tenants in common. And we cannot say that an enjoyment of land which is of such value as that those who do not actually enjoy it, but who might if they so pleased, are entitled to a compensation from those who do, is not something which is rateable; and being rateable, it must be rated in the hands of those who have the beneficial possession. 5 *E. R.* 480.

In *R. v. Tolliffe*. *M.* 28 *G.* 3. It was decided, that a person who had leased to him a right of way (*i. e.* a way-leave) over the land of another, paying for it so much *per ton* for the goods carried over it, was not rateable as an occupier, such way-leave being a bare right of passage, which is an easement and not a grant of the profits of the land, and an easement is not rateable; the land having been before rated in the hands of the occupier of that land. 2 *T. R.* 90. 1 *Bott.* 181. *pl.* 198.

In *R. v. Bell and others*. *E.* 38 *G.* 3. The dean and chapter of *Durham* granted certain leases of lands for 21 years, reserving to themselves the right of granting waggon-ways over the demised premises, paying damages for the spoil of ground. The appellants leased of the dean, &c. certain waggon-ways over these premises, making satisfaction to the original lessee for spoil of ground; they constructed these ways as most convenient to themselves, and prevented all persons, excepting such as were authorized by themselves, from using or going upon these ways. They paid 200 l. rent for them, and were rated for them. The lands also through which these ways passed were rated after the construction of them the same as before; and the appellants were held by the court to be rateable for these waggon-ways; and *Grose J.* said, it was clear that the appellants had the exclusive occupation of this ground. 7 *T. R.* 598. 1 *Bott.* 218. *pl.* 221.

Where a farmer
lets his dairy of
cows, he may be
rated for the

R. v. Brown. *T.* 47 *G.* 3. The question before the court was the rateability of the following species of occupation.

The

The occupiers of several farms, who were rated to the poor for their respective farms, let their cows to an under-tenant called a dairy-man, at a certain rent *per cow*; which cows, by the agreement, were exclusively depastured on different grounds belonging to the occupier of the farm, at different times of the year; he being obliged to feed and maintain them without any expence to the dairy-man; the dairy-man made a profit of the milk and produce of such cows, independently of the profit made by the tenant of the farm. The appeal was, because these dairies were not rated, and the court of sessions thought such dairies not to be rateable.

profits as part of the profits of the farm, or they may be rated in the hands of the dairy man, provided the farmer be not rated for the profit he derives from letting them to hire.

It was held by Lord *Ellenborough* C. J. that presuming the farmer to have been rated to the full profits of the farm, it mattered not to the appellant whether the rate were distributed to the farmer and the dairy-man, or laid solely on the farmer. That certainly the dairy-man had an interest which would have given him a settlement, and he might have been rated separately from the farmer. That if a farmer bargained with another to let him have a field of grass to cut, or the aftermath of his meadows, such other might be rated while those subordinate interests existed. But if one general rate were made upon the whole, including these particular profits and interests, it would be no injury to the appellant. So also where the owner of a house and garden let the profits of his garden. The principle is, that what has once paid shall not be made to pay again. And this agrees with the case of Lord *Bute v. Grindall* (1 T. R. 338.) And he said it would be a different case if a farmer derived profit from stock kept on his farm, but not connected with the management of it, as if he kept stock which he fed with oil cake for sale, there he would be rateable separately for that stock, not as stock of his farm, but as stock generally, from which he derived a distinct and separate profit. The present are properly the stock of the farm. The other judges agreed. 8 E. R. 528.

There are, moreover, other cases in which lands, houses, and other tenements become of greater annual value, in consequence of particular circumstances attached to them, and it is determined that in such cases the assessment must be made upon the amount of these additional profits.

R. v. Miller. T. 17 G. 3. Certain lands with buildings thereon, and a certain well of mineral water thereout arising, called the *Cheltenham Spa*, were demised to *W. M.* at a yearly rent of 100 l. The lands and buildings, independent of the well, were of the annual value of 20 l. And he was rated to the poor as for an entire estate of 100 l. a year. By *L. Mansfield*: Nothing can be plainer than the

The profits of a mineral spring are part of the produce of the land, and therefore the occupier is rateable for the whole as one estate.

present case. This is not a rate upon the profits of the well, but upon four acres of land let to the defendant at 100 l. a-year; and the value arises, partly from the buildings, and partly from the spring that produces the mineral water. Therefore, the profits of the spring are part of the produce of the land. In *Worcestershire* and *Cheshire*, where there are salt springs, the rent of the land is increased considerably on that account. So here, the consideration of the well increases the rent. It is part of the produce of the land; and therefore, as such, ought to be rated. *Cowp. 619. 1 Bott. 155. pl. 185.*

The profits of a house containing the steel-yard of a weighing machine, are rateable as arising from the house itself, the machine being annexed to the freehold.

E. 23 G. 3. R. v. St. Nicholas Gloucester. The mayor and burgesses were possessed of a house in the parish of *St. Nicholas in Gloucester*, and erected a machine in a street leading by the said house for weighing waggons, carts, &c. for which they received 2d. per ton for what was weighed there, but persons were not compellable to weigh their carriages, &c. The steel-yard, part of the said machine, was in the said house which was called the engine house: The house, exclusive of the profits of the machine, was worth 5l. and the profits worth about 40l. a-year: The mayor and burgesses were rated for the machine house 24l.: 11. 16s.—*Per Lord Mansfield.* The nature of the thing shews that the machine is annexed to the freehold; they are one entire thing, and are together rated by the common known name (the machine house), which comprehends both. The steel-yard is the most valuable part of the house; the house therefore applied to this use, may be said to be built for the steel-yard, and not the steel-yard for the house: the clear profits are undoubtedly rateable, but a liberal allowance ought to be made for wear and tear, labour and attendance. *Wilkes J.* said, if the machine be appurtenant to the building, its clear profits are undoubtedly rateable. If a billiard table stand in a house, and the house should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let, at the advanced rate. Rate affirmed, *Cald. 262. 1 Bott. 163. pl. 191.*

The profits of a house having a carding machine, are rateable.

In *R. v. Hogg, B. 27 G. 3.* It was holden that a house wherein there was a carding machine for manufacturing cotton, being let together with the machine as one entire subject, (the building being worth only 2 guineas a-year by itself, but together with the machine rated at 36l.,) was properly rated as one subject. It was stated in the case that the engine was not fixed to the premises, but capable of being moved at pleasure. *Asbhurst J.* considered the house and engine as one entire subject, and therefore rateable as such. *Buller J.* considered them rateable both on that ground; and also

also because the engine was permanent property, visible, and yielding profit. And *Grose J.* agreed upon the same grounds. *Cald.* 266. 1 *T. R.* 731. 1 *Bott.* 177. *pl.* 197.

R. v. Dock Company of Hull E. 26 G. 3. Two justices allowed a rate for the relief of the poor of the parish of S., the rate was confirmed and the following case was stated, viz. That commissioners in pursuance of an act 19 G. 3. purchased lands in the parish of S. which both before and after the purchase were assessed to all parochial assessments: that the dock company converted 3 acres of the said land into part of a dock or basin, which in the whole contains 10 acres. That the company in 1783 received a clear profit for tonnage of ships of 3,760l.; that a rate was made upon that part of the dock which lies in S. By the court: this is landed property lying within the parish, which clearly was the subject of a rate before the passing of this act. Then the question is, whether the act exempts this property which was rateable and rated before. But there are no words of exemption. As between the heir and executor, this is to be considered as personal property; but the legislature did not intend to alter it in any other respect. 1 *T. R.* 219. 1 *Bott.* 171. *pl.* 195.

Lands converted into a dock, are rateable.

R. v. The Mayor, &c. of London, M. 31 G. 3. The defendants were rated for the barge-way and toll-gate, in the hamlet of *Hampton Wick, Middlesex*, and appealed against the same, and the sessions confirmed the rate. The substance of the facts stated to K. B. were, that the appellants, by virtue of an act of parliament, purchased an antient barge-way or towing path within the hamlet of *H. W.* upon the *Thames* bank, and certain antient tolls payable in respect of barges drawing barges along the same. The appellants leased the herbage of the way and path, for a sum which was appropriated to the navigation; the lessee occupies and pays rates for the herbage. The old tolls were discontinued, and new tolls were taken for all barges navigating between *London Bridge* and the *City Stone*, according to the quantity of tonnage; 1½d. per ton was payable and paid to the appellants for every barge towed along a certain part of the barge-way, and *H. W.* is within that limit, and the tolls were collected elsewhere, and not at *H. W.* Lord *Kenyon* Ch. J. The difficulty has arisen from not considering what is rated: It is not a rate on the tolls, but the close of land called the barge-way, and the toll-gate. Now the questions are, 1st, Whether the property be, or be not rateable? 2d, Who should be rated for it? First, the subject matter of the rate is real property, it is land, tenement, or hereditament; and it is liable to be rated, unless it be so circumstanced that there is no occupier on whom the rate can be imposed. But here the city of *L.* are occupiers; for *Spencer's* interest is confined to the herbage

Where tolls are paid for passing a certain barge-way, the way is rateable for those profits.

and pasture. And there is no doubt that they are in possession or the actual occupation of this towing path. 4 T. R. 21. 1 Bott. 196. pl. 208.

Upon the subject of tolls, two questions have arisen; first, whether they are rateable, and secondly, where they are rateable.

The tolls of a light-house are not rateable. Semb.

R. v. Rebowe, M. 12 G. 3. Two light-houses were erected at *Harwich* by Sir I. R. by virtue of a patent, which also granted to him, for the maintenance thereof, certain tolls payable by all ships coming into or passing by the harbour. Part of these tolls were collected by the defendant at *Harwich*, and the remainder in other parts of the kingdom. He did not reside in the parish, and was no occupier there, excepting by having two persons who lodged in one of the light-houses, to take care of them. He was rated to the light-houses, and the sessions confirmed the rate. The court decided that the tolls were not rateable there, not being locally situated in the parish. According to what was stated in argument in the case of *R. v. Cardington*, (a subsequent case), the ground of decision was, that the vessels did not come within the parish, and therefore the tolls were not due there. 1 Bott. 142. pl. 177.

Note. In a MS. note of this case in the possession of Mr. Douglas, it is expressly stated that the court observed, that it was not set forth in the case, that *Rebowe* was rated for the house, but only for the tolls. Dougl. 118. n. 1 Bott. 143. pl. 177.

But in *R. v. Salter's Load Sluice*, it was held that tolls are rateable.

Tolls taken by a corporation are rateable.

On a motion to confirm a tax laid by the justices on the toll of a corporation, Holt Ch. J. said, That on a reference to him by both parties, he was of opinion that the toll was not exempted, but chargeable, though part of it was to maintain the mayor. 3 Keb. 540.

Tolls taken upon a river for passing a sluice are rateable, where they become due, not where they are received.

E. 17 G. 3. R. v. I. Cardington. This case came before the court upon a rule to shew cause, why an order of sessions quashing a rate for relief of the poor of the parish of *Cardington* should not be quashed as to the assessment upon *Ashley Palmer* esquire. The case specially stated was, that *Ashley Palmer* esquire was seised in fee of the right of navigation of that part of the river *Ouse*, which lies between *Erith* in the county of *Huntingdon*, and the town of *Bedford*, and of all the tolls arising for the carriage of coals and other goods upon that part of the navigation: That he had power to erect sluices and staunches for the better keeping up the water and carrying on the said navigation, and that tolls were paid for passing through every sluice, and in a different rate for different sluices: That one sluice was

was erected in the parish of *Cardington*, at which the toll was 3d. a chaldron or load weight : That Mr. *Palmer* did not reside in the parish of *Cardington*, nor had he any person resident at that sluice to receive the tolls ; but that the tolls for that sluice were received at *Barford* or *Eaton* : That neither Mr. *Palmer*, nor any other of the former proprietors of that navigation, were assessed to the poor rates for their sluices or for the tolls or profits ; but they had for many years been assessed to the land tax. — Against the rule, it was argued, That tolls and other yearly profits being specially charged in the land-tax acts, and not in the act of 43 *El.* was a proof that the parliament did not intend this species of property to be charged to the poor. Besides, as Mr. *Palmer* did not reside in the parish, nor was even the toll received in the parish ; if assessable at all it must be assessed where received, and not in the parish of *Cardington*. And to this purpose was cited the case of *Rebowe* as directly in point. If any distinction could be made between the two cases, it was that the present was rather stronger than that ; because there two persons were constantly resident in the light-house, the tolls of which were the object of the rate. But here, neither Mr. *Palmer*, nor any body who could represent him, resided in this parish. — In support of the rule, it was contended, that this species of property, though not expressly within the words, was clearly within the meaning of the statute of 43 *Eliz.* That there could be no difference between these tolls and those of any other description ; as the tolls of a market, or the like, which are clearly assessable to the poor. In the case of *Rebowe*, inquiry was directed to be made as to the tolls of bridges ; when it appeared that *Fulham* bridge tolls were taxed at the rate of 500 l. a-year. Why not assess these tolls as well as them ? As to the objection of their not being received within the parish, they might be received there if Mr. *Palmer* chose ; they were not necessarily payable elsewhere. But the material thing was, that they arose within the parish. The consideration for which they were paid, was the passing through the sluice *within* the parish ; and if a boat went no farther, the toll was to be equally payable. It was therefore completely due within the parish. The ground of the decision in *Rebowe's* case was, that the vessels did not come within the parish, therefore the tolls were not due there ; but here, they arose and were due within the parish. The court ordered the case to stand over, that inquiry might be made as to the custom of rating this description of property in other places. In answer to the inquiries, it was returned on the part of the plaintiff, that out of 14 sluices, being the whole number erected upon this navigation, one only was rated to the poor ; that the

river *Ivil*, near *Bury*, the *Northampton* river, *Larke*, *Ouse*, and *Stower* were none of them taxed. On behalf of the defendant it was stated, that the tolls at *Marlow*, *Oxford*, *Reading*, and several others on the river *Thames*, were all rated to the poor. Upon the whole, the court was of opinion, that these tolls were rateable; and therefore directed the rule for quashing the order of sessions to be made absolute, and affirmed the rate. *Cowp.* 581. 1. *Bott.* 154. pl. 183.

Tolls are rateable where they are due.

In *R. v. Aire and Calder Navigation*, *M.* 29 G. 3. It is said by *Buller J.* that it is material to consider at what place the tolls become due. If a person have property in *Yorkshire*, and receive the profits of it in *London*, he shall not be rated for it in *London*: for a toll must be considered to be paid at the place where it becomes due: it is not payable at the end of every mile, but it is an entire contract to carry the goods the whole distance intended, and the hire is payable at the place to which by that contract they are to be carried. 2 *T. R.* 650. 1 *Bott.* 117. pl. 141.

In this case the assessment was made at *Leeds*, upon the undertakers of the navigation for the tolls and duties of the said navigation at *Leeds*; the navigation course extended for many miles beyond the township of *Leeds*; and the proportion of the tolls arising from the part lying within *Leeds* was much less than the sum at which they were assessed.

So in the case of *R. v. The Mayor &c. of London*, *M.* 31 G. 3. (supra) it was said by *Buller J.* That it had been settled in *R. v. Aire and Calder Navigation*, and in *R. v. Cardington*, that the party is to be rated where the tolls become due. That the court in deciding those cases proceeded on the principle that the owners were not entitled to receive the tolls till the vessels arrived at a certain place, and where those tolls are due, there the party is rateable: It is immaterial in what place they are received, for if in this case the defendants received them at *Guildhall*, they could not be rated for them in *London*, but at *Hampton Wick*, where they became due. 4 *T. R.* 26, 27.

And also in *R. v. Page*. *H.* 32 G. 3. It was determined, that where by a navigation act the proprietor was entitled to a toll of 4s. per ton. for goods carried from *Reading* to *Newbury* or from *Newbury* to *Reading*, and to a proportionable sum for any less distance; and was also enabled to appoint any place of collection; the tolls for goods carried the whole voyage from *Reading* to *Newbury*, were rateable at *Newbury*, though in fact they were collected in a parish between *Reading* and *Newbury*; because the tolls became due where the voyage was completed. 4 *T. R.* 543. 1 *Bott.* 84. pl. 116.

In *R. v. the proprietors of the Stafford and Worcester Canal Navigation*, M. 40 G. 3. The proprietors were empowered by the navigation act to take duties for tonnage and wharfage for all goods conveyed on the canal at $1\frac{1}{2}$ per mile for every ton; to be paid at such places as they should appoint. And the court held that the doctrine in *R. v. Page* was applicable to this case, and that therefore the proprietors were rateable for the duties at the places where they became due, that is, at the places where the respective voyages terminated, and not in the several parishes through which the canal passed, according to the distance in each. 8 T. R. 340. 1 Bott. 89. pl. 118.

5. Where property is to be rated.

For lands and tenements the assessment is, of course, made where they lie. *Dalt.* 165. Lands and tenements.

By 17 G. 2. c. 37. *When waste lands, which were formerly fens and marsh, are drained and improved, and the parish to which they belong cannot be ascertained, the occupier thereof, or of houses built thereon, tenements, tithes arising therefrom, mines therein, and saleable underwoods thereon growing, or hereafter to grow, are to be rated to the parish that lies nearest to such lands; and if any dispute shall arise as to what parish or place they ought to be rated to, the justices in quarter sessions shall, after due notice given to the persons interested, and to the parishes and places abutting and adjoining the said lands, cause them to be assessed as they shall think meet, and their determination and allotment is to be final and conclusive.* Marsh lands drained.

So also the artificial profits of lands are rateable where the lands lie; as was determined in the case of *Atkins v. Davis*, T. 23 G. 3. Which was a question as to the rateability of the London waterworks, and also where they were rateable. The profits arose from the sale of the water which was by means of pipes conveyed from the engine to distant parts of the city. And it was held that the company were rateable for the profits of the concern, and in the parish in which the engine stood. *Cald.* 315.

And in that case the same principle was held to extend to all similar cases. The cases of tolls have been before stated.

In *R. v. White and others*, T. 22 G. 3. it appeared that *S. White* was rated in the parish of *P.* for his personal property, which consisted of certain ships employed in carrying on the Newfoundland trade from the port of *P.* in the parish of *P.* The court held that the ships were rateable in the parish of *P.* which was their home. 4 T. R. 771. 1 Bott. 202. pl. 211.—89. pl. 117.

Ships are rateable at their home.

R. v.

or other of those grounds on which the appellant was not rateable under these that a person might be deemed an inhabitant, and not for all. And he observed that personal property *nomine*, but the persons themselves, *in* to their ability, which can only be known by the personal property, which is of a fluctuating account of debtor and creditor surplus only as the criterion of that ability. p. 455.

R. v. Collison and Taylor. E. 43 G. 3. B. a case reserved at sessions it appeared that they did not reside at *Hull*, though they had there. It was stated that the defendants were shipowners, and that the ships were locally within the time of the rate, and were registered there. It was contended that this was the home of the ships, and that the personal presence of the owners was not necessary. The court had great doubts upon the statement of the case, well on the question of inhabitancy which was not negatived by the case, as also upon the case in not shewing that the owners derived their profits from the ships within the parish of *Hull*. The court was of opinion that the mere fact of being registered there could not make them rateable there: *verdict* in favour of the defendants.

the ship was locally within the parish at the time of the rate. *Ib.*

These cases were observed upon in the following case Packet boats.
of *R. v. Jones* and others. T. 47 G. 3. This was an appeal against a poor rate made for the parish of *Holyhead*, by which *Jones* was rated "for his packet," at a sum therein named. *Jones* resided at *Holyhead*, the packet boat with its furniture was provided by *Jones* at his own expence, and he was commander of it; the government exercised no controul over the boat, excepting that it should be fit for the carriage of the mails. The boat was registered at *Beaumaris*, but was always considered by the seamen as belonging to *Holyhead*. *Jones* had from government a commission as commander of the packet. By the permission of government the packet conveyed passengers and luggage, which was the source of profit to the commander. The commander was subject to certain regulations made by government relating to the times of sailing, &c. The sessions confirmed the rate. In the course of the argument, *Lawrence J.* observed that the cases of *R. v. Liverpool* and *R. v. Callison* were defectively stated, and did not raise the general question. The stat. 43. Eliz. c. 2. imposes the rate upon inhabitants and occupiers, and the court only decided there that a person not inhabiting within a parish was not rateable there, merely because he had a ship registered at the port, and lying there at the time: and so was to be understood what was said by *Le Blanc J.* upon the rateability of the proprietors of a mail coach for its profits. And the court also stated that they could not consider these packets as being *pro tempore* the property of the crown, notwithstanding that the masters were subject to some degree of discipline and controul while in the service.

Per Lord Ellenborough C. J. This case cannot be distinguished from that of the *King v. White*, and under that authority these packet boats must be held to be rateable. It is objected that they are not permanently local property in the parish of *H.* and that no profit is made of them there. But the inchoate act which is to earn the profit begins there, and therefore there is a part performance within the parish, of that which is to make the profit by the use of the property in question. The boats are laid up there; are repaired there; the owner dwells there; they yield profit there, for the passage money from *Dublin* is actually earned there; and that of the voyage from *H.* to *D.* is at least begun to be earned at *H.*; that it yields some profit there cannot be doubted; and the owner resides in the same parish. This brings it completely within the *Poole* case.

Law-

Lawrence J. observed that it was not necessary for the purpose of making property rateable in any parish that it must be *permanent* there, and produce profit there.

The other judges agreed, and the rate was confirmed 8 E. R. 451.

6. *Of the proportion in which the rate shall be made.*

By the 17 G. 2. c. 38. Where persons shall come into or occupy any premises out of which any other person assessed shall be removed, or which at the time of making such rate was unoccupied, every person so removing from, or coming into, or occupying the same, shall be liable to pay such rate, in proportion to the time that such person occupied the same respectively, under the like penalty of distress as if such person so removing had not removed, or the person coming in or occupying had been originally assessed in such rate; which proportion, in case of dispute, shall be ascertained by two justices. *f* 12.

The court will not presume a rate unequal although houses and lands are not rated alike.

In the case of *R. v. Brograve*, M. 10 G. 3. It was moved to set aside an order of sessions confirming a rate in which houses and lands were rated differently. But by the court: Here is no apparent inequality, and we are not to presume it. There may be reason to make a difference between lands and houses. For there are several charges incident to houses which do not fall upon lands, to lessen their yearly value. 4 Burr. 2491. 1 Bott. 112. pl. 135.

Unless a rate be manifestly unequal, the court will presume it equal.

E. 20 G. 3. *R. v. Butler & al.* It was objected against a rate made by the parish officers of *Swannage*, alias *Sandwich*, and confirmed by the sessions, that no difference was made in assessing tenements and farms consisting of land, and cottages or dwelling-houses; whereas the clear income of the former was at 1 d. in the pound, to three farthings in the pound of the latter; and that it had been the custom to rate them nearly in that proportion until the year 1778, when, at a public vestry, both lands and houses were rated at 1 d. in the pound, and the same way of rating hath since continued.—By L. Mansfield: The question before the court is, Does the rate upon the face of it appear to be equal or unequal? Unless it is manifestly unequal, the court will presume it equal. Circumstances may vary the value of different estates; and if this plainly appear, then what is said in *R. v. Brograve* applies: but you take advantage of an *obiter* saying of the court in that case, when the true legal ground of the authority is decisive against you. Rate affirmed. Cald. 93. 1 Bott. 114. pl. 138.

The court of King's Bench can lay down no

H. 21 G. 3. *R. v. Sandwich* alias *Swannage*. A poor rate was made charging tenements and farms at 1 d. in the pound,

pound, and cottages and dwelling-houses at three farthings in the pound.—The sessions on appeal quash the rate and state the following case: 'That from the year 1735 to the year 1776 a constant distinction had been observed; houses having been rated at a less proportion to their rents than the lands were; that in this parish the lands were burthened with no particular charges, but both were equally subject to the usual repairs and taxes generally incident to each respectively.—In support of the rate it was urged; that it had been made in consequence of what seemed to be the opinion of the court in the last case. And also, that the rate ought not to have been altogether quashed, but amended by adding to the sums assessed upon the houses.—It was answered, that in this parish nine-tenths of the burthen of the poor arose from the houses; and that the rate could not be amended, as the objection went to every name in the rate.—By *L. Mansfield*: 'The court has certainly laid down no general rule as to the mode of assessing houses and land; they could not either one way or the other; the proportion must ever depend upon local circumstances; and if nine tenths of the burthen arise from the houses, such circumstances were sufficient to influence the sessions in adjusting that proportion. The objection unavoidably goes to the whole rate, for it is throughout made by a rule and proportion which the justices thought unequal, and therefore they could do nothing but quash the whole. *Cald.* 105.

general rule for the proportion to be observed in rating.

1 Bott. 115. *pl.* 130.

And in *R. v. T. Maß*, *H.* 35 *G.* 3. which was upon the appeal of *T. Maß* against a poor rate for the parish of *St. Neots*, in which the appellant was rated at the full annual value of his estate at that time; and *W. Fowler* was rated at 29 *l.* *per ann.* but the real annual value in consequence of improvements was 175 *l.*; he occupied, besides, other lands and property in the parish, for which he was rated after the same manner.—There was also one *Gorham* who was rated in the same way. This rate upon appeal was confirmed at the *Huntingdon* sessions — *L. Kenyon* Ch. J. 'The assessment for the relief of the poor should be so contrived, that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. Every inhabitant ought to be rated according to the present value of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it.) If a person chuse to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that: but if he prefer using it in the melioration of an estate or other property, he is rateable for the same in another

A person must be rated according to the improved value of his property.

grounds on which they proceeded, quashed the rate, because the inequa upon the face of it : but they have disc and, on the case as stated, it is impossible have made a mistake. This rate a throughout, that it cannot be amended J. of the same opinion. Order of sessio 154. 2 Bott. 211. pl. 216.

Also in *R. v. Skingle, E. 38 G. 3.* on poor rate, the ground of the appeal wa and *John Bull* were under rated, the la pation being now of a greater annual va served by the lease, and the rate was m rent : but the court were of opinion t clear for argument, and that the rate o according to the improved value. 7. T. pl. 220.

-tax no
for the poor

R. v. Clerkenwell. H. 2 G. An orde was made to confirm a poor rate, whic cording to the *land-tax*. Objected, th not equal, because the personal estate i not chargeable to the land-tax, but it i by the whole court this rate for that r *Fol. 12. 1 Bott. 111. pl. 133.*

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R. v. Darlington. M. 36 G. 3. G. A. pealed, because seven persons were not in trade. The sessions quashed the

and which the appellants contended was an admission that, to that time, those seven persons possessed stock in trade producing the profits there stated: This rate was paid by some of the traders, but not by others, to enforce payment from whom no step had been taken. The appellants then proved that those seven persons when the rate was made in Jan. 1795 kept shops in *Darlington*, and that each possessed a visible stock in trade there, and appeared to carry on business to the same extent as in 1794. The circumstances of the ability of those seven persons, or that they respectively made profit of their stock in trade, or that it was exclusive of their debts or that it was a clear residue after debts paid, did not appear otherwise than as above stated.—*L. Kenyon Ch. J.* The case of *R. v. Dursley* (above) has been particularly pressed upon us as a decision of our own; but the present case is clearly distinguishable from that. There the sessions had forbore to draw any conclusion from the facts proved before them, and left a mass of evidence for our consideration, but so incomplete, that we could not say, upon the facts stated, whether the parties ought or ought not to have been rated; whereas here the justices have drawn the conclusion. They have indeed added, that it did not appear to them that the stock was productive, &c. “otherwise than as therein-before stated;” but then it becomes material to see what is before stated; it is stated, that these persons had large visible stock in trade, that in the preceding year they were rated for that stock, and that they submitted to the rate; for whether paid or not at the time is immaterial, no appeal having been made; then their circumstances not being altered, the question is, Whether all this were not *prima facie* evidence for the justices to proceed upon, and whether, as this evidence was not opposed by evidence on the other side, it was not sufficient to enable them to draw the conclusion which they have drawn. Undoubtedly it was strong *prima facie* evidence against the persons rated; and they should have discharged themselves in such a case by evidence, shewing that they ought not to have been rated. In this case some evidence was before the justices in support of the rate; it was competent to them to decide on the weight of it; they have decided, and we cannot now say that the conclusion they draw was certainly wrong. With regard to the other question, this was a case in which the sessions could not alter the rate, because by the addition of these seven persons the proportion of every other person would have been altered, therefore they were bound to ~~quash~~ the rate. The other judges concurred. Order of sessions confirmed. 6 T. R. 468. 1 Bott. 215. pl. 218.

7. *Of allowance by the justices : and of the publication of the rate.*

The requisites pointed out by the principles of the several preceding cases, as being necessary to give validity to a poor rate, having been observed, the last circumstance which remains to be considered, and which renders the rate operative is, the allowance by the justices : respecting which allowance the following cases have occurred, and statutes been passed.

The form of the rate may be to the following effect :

Form of the rate.

AN assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned relating to the poor, for the parish of _____ in the county of _____ made and assessed the _____ day of _____ being the first rate at sixpence in the pound for the present year _____

	£.	s.	d.
A. B.	—	—	—
C. D.	—	—	—
E. F.	—	—	—

And so forth.

Affessors, A. B. }
C. D. } Churchwardens.
E. F. }
G. H. } Overseers of the poor.

Allowance of the rate by the justices.

2. By the aforesaid statute of the 43 *El.* the said rate and taxation shall be made, *with the consent of two justices, one whereof is of the quorum, dwelling in or near the parish or division.* s. 1.

And this consent is usually given by the justices signing the same, with their allowance thereupon thus :

WE, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do consent unto and allow of this assessment : Witness our hands the _____ day of _____

J. P.
K.P.

The sessions have no original power to order an assessment.

But this consent is to be understood of two justices out of sessions ; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal ; for in such case the party would be deprived of the benefit of appealing. 2 *L. Raym.* 798.

And if the justices refuse to sign and allow the rate, the court of king's bench will grant a *mandamus* to compel them.

M. 7 G

M. 7 G. R. v. The justices of Dorchester. A *mandamus* issued to the justices to sign a poor rate made by the churchwardens and overseers. Before the return a motion was made to supersede it for several objections to the fairness of the rate; and that this would be speedier and better for the poor, than to reserve the debate of them for a formal return.—But by the court the two justices are necessary to sign the rate only by way of form; for it is the churchwardens and overseers that have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for our examination: The *superseas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate: and the court having before given their opinion of this upon the motion, they resented this usage so far that they quashed the return, and ordered an attachment against the justices, who thereupon submitted, and returned that they had allowed the rate. 1 Str. 393. 1 Bott. 77. pl. 101.

The justices cannot refuse signing a poor rate.

R. v. Uttoxeter, E. 5 G. 1. The allowance of the poor's rate by two justices is merely a ministerial act. 1 Bott. 77. pl. 100.

The allowance of a rate is a ministerial act.

So also it was determined in the case of *R. v. Kynaston*. 1 E. R. 118. 2 Bott. 680. pl. 790.

But in *R. v. Folly*. T. 27 and 28 G. 2. It was decided, That a rate for a borough cannot be made by the overseers appointed by the justices of the county, nor be allowed by the justices of a county. 1 Bott. 78. pl. 103.

Rate for a borough not to be confirmed by justices of a county.

R. v. Edwards and Symonds. T. 7 G. 3. The defendants were justices of the peace for *St. Ives* in *Cornwall*, and had evaded the signing of a poor rate in obedience to a writ of *mandamus*, by keeping out of the way so as not to be served with the writ; and an attachment was granted for the contempt. Bl. Rep. 637. 1 Bott. 78. pl. 104.

Attachment for evading the signing of a poor rate according to *mandamus*.

The churchwardens and overseers, or other persons authorized to take care of the poor, shall cause public notice to be given in the church of every rate for relief of the poor allowed by the justices, the next Sunday after such allowance; and no rate shall be reputed sufficient so as to collect the same till after notice given. 17 G. 2. c. 3. s. 1.

Publication.

The next Sunday after such allowance] In *R. v. Newcomb* and an other. T. 31 G. 3. It was determined, that if a poor rate be not published in the church on the next Sunday after it hath been allowed by the justices, it is a nullity, and payment under it cannot be enforced, although not appealed against at the sessions. And *L. Kenyon C. J.* said it was a radical defect in the rate itself, which nothing could cure. 47. R. 368. 1 Bott. 78. pl. 105.

wardens, or other persons, or by the
then it shall be lawful for the justices
neral quarter sessions, or the greatest
take such order therein as to them
venient, and the same to conclude a
parties.

By the 17 G. 2. c. 38. s. 4. If any
grieved by any assessment, or shall b
jection to any persons being put in or
ment, or to the sum charged on any pe
in ; he may, giving reasonable notice
or overseers, appeal to the next ses
riding, division, corporation, or franch
notice be not given, then they shall adj
next quarter sessions after.

Provided, that in all corporations or
four justices, the appeal may be to
quarter sessions for the county, riding
such corporation or franchise is situate.

And on all appeals from rates, th
the same in such manner only as shall
relief, without altering such rates with
sons mentioned in the same ; but if up
whole rate, it shall be found neces
same, then they shall order a new rate

Also by s. 4. The court may awa
either party as in cases of settlement by

And now by the 43 G. 2. c. 22. S

just cause) amend such rate, either by inserting therein or striking out the name of any person, or by altering the sum therein charged, or in any other manner which the court shall think necessary for giving relief, without quashing or wholly setting aside such rate: provided always that if the court shall think it necessary for giving relief to the person appealing that the rate should be wholly quashed, they may quash the same, but nevertheless, the money assessed on any person may be levied and recovered by such ways and means and in the same manner as if no appeal had been made, which shall be deemed as payment on account of the next effective rate.

By f. 3. If the said court of general or quarter sessions shall, on appeal, order any rate or assessment for the poor to be quashed, the said court may order any sum in such rate or assessment on any person, or any part of any such sum, not to be paid, and then no proceedings shall, after such order, be commenced; or if any proceedings have been previously commenced they shall proceed no further. But no justice, constable, or other officer of the peace, or other person, shall be deemed a trespasser for any thing done for the purpose of levying such sum, before he shall have had notice in writing of such order for the non-payment of such sum.

When rate is quashed, the court may order the sum charged not to be paid, and may stop proceedings.

By f. 4. All notices of appeal shall be in writing and signed by the person giving the same, or his attorney, and shall be delivered or left at the place of abode of the churchwardens and overseers, or two of them; and the particular grounds of appeal shall be specified in such notice, and no other ground of appeal than such as are specified shall be heard by the court at the hearing of the appeal.

Of notice of appeal.

By f. 5. Provided nevertheless, that when the parties interested in such appeal shall consent in open court, such sessions shall proceed to hear and determine the same: as also by like consent, such grounds as are not specified in the notice.

By f. 6. Where the ground of appeal is the improperly inserting or omitting certain persons in the rate, or under-rating or over-rating them, or any other cause which may require alteration in the rate, notice of appeal must also be given in writing as aforesaid to such persons as are interested in the event of such appeal, as well as to the churchwardens and overseers, which persons shall be heard if desired, and the sessions may order such persons names to be inserted or struck out of the rate, or the sums at which they are rated, as the court shall think right, and the proper officer of the court shall immediately do the same.

the court of general or quarter sessions of any person to be struck out, or the person to be lowered; and if it shall be the said court, that such person hath paid of such appeal, paid any sum in consequence, which he ought not to have paid with, in every such case the said court payment thereof by the said churchwarden the person who paid the same, together with charges and expences, occasioned by him paid or been required to pay the same ordered to be repaid shall, together with, be levied and recovered from the said overseers, or any of them, by distress as the poor-rate assessment may be covered.

R. v. St. Mary Taunton. E. 12 C. 43 El. c. 2. gives the justices and power over appeals against rates within the borough, exclusive of the *pl. 287.*

deal must be
the next
sessions after the
warrant.

In *R. v. Atkins. M. 31 G. 3.* It appeared that an appeal was made in October 1789, and allowed the following, against which the defendant was ordered to pay at the *Easter* sessions, when the appeal was because it was not made to the *next* sessions, and order of sessions being removed (without having been removed).

Next sessions also means, 'next after the allowance'. *R. v. Atkins*. *M.* 4 *T.R.* 12. 1 *Bott.* 287. *pl.* 258.

R. v. Justices of Suffex. *H.* 37 *G.* 3. The appeal may be made to an adjourned sessions. 7 *T.R.* 107. 1 *Bott.* 728. *pl.* 871. And in this case Lord *Kenyon* C. J. referred to the case of *R. v. Monks Risborough*. (1 *Bott.* 723. *pl.* 860.) and *R. v. Hinderclive*. (1 *Bott.* 649. *pl.* 727.)

R. v. Justices of Berkshire. *H.* 27 *G.* 2. If the ground of appeal against a poor rate be, that certain persons are omitted in the rate, the names of those persons should be specified in the notice of appeal. 1 *Bott.* 274. *pl.* 288.

Of the notice.

R. v. King's Langley. *T.* 11 *W.* 3. Upon an appeal against an order of removal, the justices adjourned the appeal for further consideration. And by the court, they may well adjourn an appeal upon debate for further consideration. 2 *Bott.* 730. *pl.* 873.

Adjourning an appeal for further consideration.

Bodmin v. Warligen. *M.* 23 *G.* 2. On an appeal against an order of removal, the justices were divided, and the clerk of the peace made an entry that the appeal was lodged and nothing done in it. And the court held, that under these circumstances the clerk of the peace ought to have entered an adjournment.

Where justice are divided.

R. v. the Justices of Essex. *E.* 40 *G.* 3. The reverend *J. R. H.* gave notice of his intention to appeal to the quarter sessions in *Essex*, against a rate made for the relief of the poor of the parish of *Upminster*, and on the day before the sessions countermanded his notice; whereupon the parish officers of *Upminster* applied to the sessions for the costs to which they had been put in preparing to resist the appeal, under the statute 17 *G.* 3. *c.* 38. *f.* 4. But the court of quarter sessions thinking they had no authority under the statute to give costs, as no appeal was entered, refused to hear the evidence which the parish officers were prepared to offer, in order to shew that they had been unnecessarily put to great expence. *Per curiam*. The quarter sessions have no authority to award costs under the statute 17 *G.* 2. *c.* 38. unless an appeal has been entered and determined. The determination of the appeal is a condition precedent to the power to give costs, the words of the act being "may award to the party for whom such appeal shall be determined reasonable costs," &c. and The subsequent words "in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons," &c. only relate to the mode in which those costs are to be recovered: By referring to the former statute under which costs may be given in two instances, and by mentioning only one of those instances in the latter statute, it is evident that the legislature did not intend by the latter

The sessions cannot award costs unless the appeal be entered and determined.

to authorize the sessions to give costs in both cases. Rule refused. 8 T. R. 584. 2 Bott. 757. pl. 915.

Which party
shall begin.

In the case of *R. v. Newbury*. M. 32 G. 3. Upon an appeal against a poor rate the question was, Which party should begin? The court said, that where the appellant alleges that he has no rateable property within the place, the respondents should first shew that he has some property liable to be rated; for it is impossible for the appellants in the first instance to prove the negative. And *J. Heywood*, *amicus curiæ*, said, that in *Yorkshire*, where more appeals of this kind were lodged than in any other county, when the appellant objected to his being rated at all, it is the practice for the respondents to begin; but if he object to the quantum of the rate, then the *onus* lay on him. 4 T. R. 475. 1 Bott. 289. pl. 301.

Who may be
witnesses.

M. 31 G. 3. *R. v. Prosser* and others. On an appeal against a poor rate because certain persons were omitted to be rated, it was determined, that a parishioner who is liable to be rated, but who is *not* in fact rated, is a competent witness to prove the rateability of appellants. 4 T. R. 17. 1 Bott. 287. pl. 299.

After appeal,
rates to be en-
tered in a book.

True copies of the rate shall be entered in a book, by the churchwardens and overseers, within 14 days after all appeals from such rates are determined; and they shall attest the same, by putting their names thereto; and all such books shall be kept by the churchwardens and overseers for the time being, whereto all persons liable to be assessed may freely resort, and shall be delivered over from time to time to the new churchwardens and overseers, as soon as they enter into their offices, to be preserved and produced at the sessions when any appeal is to be heard. 17 G. 2. c. 38. s. 13.

(9.) Of distraining for the poor rate.

Rate to be levied
by distress.

It shall be lawful as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices, one whereof is of the quorum, to levy the said sums, and all arrearages of every one that shall refuse to contribute according as they shall be assessed, by distress and sale. 43 El. c. 2. s. 4.

And by the 17 G. 2. c. 38. *The goods of any person assessed and refusing to pay, may be levied by warrant of distress, in any part of the county; and if sufficient distress cannot be found within the county, on oath made thereof before a justice of any other county (which oath shall be certified in the warrant) the goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and if any person shall be aggrieved by such distress, he may appeal to the next sessions for the county or precinct where the assessment was made.* s. 7.

By

By 41 G. 3. c. 23. s. 1. If the sessions should quash the rate, all the sums of money by such rate charged on any person, shall nevertheless be levied in the same manner as if no appeal had been made against such rate; and such sums when levied or recovered, shall be taken as payments on account of the next effective rate made for the relief of the poor of the same parish, township, vill, or place.

By s. 2. Such sums shall be levied and recovered by distress and all other lawful ways and means, notwithstanding the person so rated shall have given notice of appeal against such rate. Provided, that if notice be given as in this act mentioned (see s. 4. ante, p. 85.) to any two of the churchwardens and overseers, then after the giving such notice, and till the appeal be heard and determined no proceedings shall be carried on to recover a greater sum from such person, than he or the occupier of the same premises shall have been rated in the last effective rate.

By s. 3. If the court shall order any rate or assessment to be quashed, they may order any sum charged on any person, or any part of it, not to be paid, and in that case no proceedings shall be commenced, or being commenced, be carried on for the purpose of enforcing the payment of any sum so ordered not to be paid.

By s. 7. If the court upon hearing an appeal against any rate, shall order the name of any person to be inserted therein, and that such person shall be rated, or shall order the sum at which any person is already rated to be increased, such several sums so inserted or increased, shall be recoverable in the same manner as if they had been originally inserted.

But by *Holt Ch. J.* in the case of *Tracey and Talbot, T. 3 Ann.* The rate cannot be distrained for by virtue of a general warrant made before the rate; but there ought to be a special warrant on purpose. 2 *Salk.* 532. 1 *Bott.* 243. p. 232. That is to say, the non-feasance of the party shall not be left to the judgment of the officer, who may, out of private resentment, sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his defence; for he may shew cause variously why a distress should not be granted; as that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like.

Oath of the refusal to pay the rate must be made before the justices, previously to distraining for non-payment.

R. 19 G. 2. *R. v. Justices of Middlesex.* Motion for a mandamus to the justices of *Middlesex* to sign a warrant of distress for levying a poor's rate upon persons refusing to pay the

In what case the court will grant a mandamus to levy a rate.

that persons applying for the warrant
out a summons, which to me does
cause why the *mandamus* should not
sufficient reason why they did not gra
appear upon the return of the *mandam*
concurrent. *Mandamus* granted. 1

summons
ist precede a
rrant of dis-
s for a poor's

In *R. v. Benn and Church*, H. 35
for a *mandamus* to the defendants v
Cumberland, to grant warrants of d
sums of money on different persons w
a poor rate for the township of *Whiteh*
that there should have been a prev
magistrates to the respective persons
refused to pay, which had not been
Bearcroft in support of the rule, relie
R. v. Justices of Middlesex.—L. K
I cannot subscribe my assent to the de
The payment of a poor rate, unless it
inforced; and if the magistrates will n
the person who refuses to pay the rate
a *mandamus* to compel them to do it
precede a warrant of distress, which i
execution. On the summons, the party
reason to the magistrates why a warrant
issue; as for instance, that he has alrea
to one of the parish officers who has
But it is an invariable maxim in our la

thereupon to levy the same." 6 T. R. 198. 1 Bott. 261. pl. 262.

The form of the summons in which case may be this :

Westmorland. { To A. O. of the parish of — in the
said county, yeoman.

WE whose names are hereunto set and seals affixed, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby summon you personally to appear before us at the house of — in — in the said county, on — the — day of — at the hour of — in the forenoon of the same day, to shew cause why you refuse to pay the rate for assessment made for the relief of the poor of the said parish for this present year ; otherwise we shall proceed as if you had appeared. Given under our hands and seals the — day of — in the year of our Lord —.

And then the warrant of distress thereupon may be thus :

Westmorland. { To the churchwardens and overseers of
the poor of the parish of — in the
said county.

WHEREAS in and by a rate and assessment made assessed allowed and published according to the statutes in that case made and provided, A. O. an inhabitant and occupier of a house in the said parish of — was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year the sum of 3s. And whereas it duly appeareth unto us, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, as well upon the oath of O. P. overseer of the poor of the said parish, as otherwise, that the said sum of 3s. hath been lawfully demanded of the said A. O. and that the said A. O. hath refused and doth refuse to pay the same : And whereas the said A. O. having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid : [Or, And whereas it hath been duly proved to us upon oath, that the said A. O. hath been duly summoned to appear before us the said justices to shew cause why the same should not be paid, but he the said A. O. hath neglected to appear according to such summons, and hath not shewed to us any sufficient cause why the same should not be paid ;] These are therefore to require you forthwith to make distress of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distress by you

you taken; the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you distrain the said sum of ———, and also your reasonable charges of taking, keeping, and selling the said distress; rendering to him the said A. O. the overplus on demand. And if no such distress can be made that then you certify the same unto us, to the end that such further proceedings may be had therein as to law doth appertain. Given under our hands and seals this ——— day of ———.

Distress shall not be deemed unlawful for want of form in the proceedings.

And where any distress shall be made for money justly due for relief of the poor, the distress itself shall not be deemed unlawful nor the parties making it be deemed trespassers for any defect or want of form in the warrant for the appointment of overseers, or in the rate, or in the warrant of distress thereupon; nor shall the parties distraining be deemed trespassers *ab initio* on account of any irregularity which shall be afterwards done by the parties distraining; but the party aggrieved by such irregularity may recover full satisfaction for the special damage, and no more, in an action of trespass, or on the case. But where the plaintiff shall recover in such action he shall be paid his full costs. But no plaintiff shall recover in any action for any such irregularity, if tender of amends hath been made by the party distraining, before such action brought. 17 G. 2. c. 38. s. 8, 9, 10.

Commitment for want of distress.

In defect of such distress, it shall be lawful for two such justices to commit such person to the common gaol, there to remain, without bail or mainprize, until payment of the same. 43 Eliz. c. 2. s. 4.

Arrears to be levied by the succeeding overseers.

And if any person shall neglect to pay such overseers, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors the same which are allowed to be due to them in their accounts. 17 G. 2. c. 38. s. 11.

The person assessed dying before payment.

In case a person charged shall die before payment (which is a thing that must needs very frequently happen), it hath been doubted how far the deceased's goods in the hands of the executor or administrator are liable to answer the same. As in the case of *Stephens* against *Evans* and others, E. 1 G. 3. *William Vesey* was assessed to the poor rate, and died intestate. Administration of his goods was granted to *John Stephens* the plaintiff. After which, two justices executed a warrant, in which warrant the said assessment was recited; and in the said warrant it was also recited that it appeared to the justices on the oath of the late overseer, that the sum assessed had been demanded of the said *William Vesey*, and (since his decease) of his widow and representative *Susannah Vesey*, and that they refused to pay the same; there-

therefore the justices require the officer to distrain the goods and chattels of the late *William Vesey*. An action of trover was brought by *Stephens* the administrator, and a special case was stated for the opinion of the court; and the question as stated was, Whether the distraining and taking and selling the cattle which were the goods of *William Vesey*, in the hands of the plaintiff his administrator, by virtue of the said warrant, was lawful, or not? —*Mr. Norton*, on behalf of the plaintiff, argued that it was not lawful, and that an action of trover is maintainable against the parish officers for taking them. And he made three objections: 1. It was a bad *rate*; being made to reimburse an overseer, for the overseer was not obliged to advance the money without a previous rate; and he may reimburse himself out of the next, made in his own time: And it was made for half a year, whereas it ought not to have been for longer than a month. 2. Here was no *refusal* by the representative to pay the money. And there can be no distress, without a previous demand and refusal. The refusal was made by *Vesey*, who is dead; and by the widow, who was not in fact, though she is in the warrant stated to be his representative. 3. Supposing the *rate* and *warrant* to be good; yet the goods of *Vesey* are not distrainable, in the hands of his personal representative, for a rate made upon *Vesey* himself. There is no instance of it, nor any case to support this; therefore it ought not to be supported. Nor is there any necessity for it; for the poor cannot suffer by the non payment of this money; there are other provisions for raising the money. This is a *casus emissus*. The acts of parliament give no such power to the justices, as to grant such a warrant; and nothing can be intended in favour of their jurisdiction. It is not the *thing* that is rated, but only the *person*, the occupier; and the statute gives the means of compelling it. The refusal to contribute according to the assessment is treated as an offence, and the *offender* is to be sent to gaol. But the executor or administrator is not an offender. It is a personal charge. An overseer could not bring an action for it, even against the person charged. He must pursue the particular remedy appointed by the act. And if so, the court will never extend the remedy against a representative. If an administrator should pay this rate, he might be guilty of a *devastavit*. And the compulsion by distress will not alter the case, or be an excuse for a *devastavit*.—*Mr. Bishop*, on the other side, for the justices and parish officers: The court will not now enter into any objection to the *rate*. The only questions therefore are, as to the *warrant*, and as to the assets being distrainable in the hands of the *representative*? As to the demand

on refusal to pay. The demand of
made, and in the present case was a
person assessed; and that made it a de
was no need of a demand upon the
assets were already become liable, and
hands. As to the danger of a *devast*
could not be guilty of a *devastavit*, ev
contract debt before a bond debt, if a
bond debt: And the distress made a
justification to him for paying it un
such distress. I do not say, that the
trator could be sent to gaol for non-
but yet the assets in his hands are dist
fund out of which it is to be paid; ef
would lie for it (as Mr. Norton agr
reply: No answer at all has been giv
the *rate* itself. And I say, that ever
were admitted to be liable to pay, ye
have been a previous demand upon hi
as what Mr. *Bishop* speaks of, is stat
therefore the court will intend tha
And I believe there is none. I never
take it to be directly the other way.
poor cannot suffer; for there are ot
make up the deficiency, in case this r
is scarce a solvent estate; because
nounced administration, and it is gran

know of. And if he is obliged to pay it under compulsion, he ought to pay it without compulsion. It is a charge imposed; not a debt. The case was left * open upon its being stated at the trial, to all or any other objections that could be made upon the face of it. There were other debts besides this.—By Mr. J. *Dennison*: That makes no difference. The question is stated particularly upon this case; and is confined to the levying the money upon the representative of the person charged. I should think, the event must have often happened in fact and experience. The practice is not stated. But however, the question is, What the law is? and not what the practice is. It is a rule, that upon a new statute which prescribes a particular remedy, no remedy can be taken, but the particular remedy prescribed by the statute. Therefore, clearly, no action of debt will lie for a poor rate. The remedy given by the act of the 43 *El.* must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay, as an offender. And it gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained by the words of this act, but the goods of the offender himself. I never apprehended, that the goods of the person assessed to the rate can be charged in the hands of the representative. And therefore (as at present advised) I should think that this action will lie for taking them. I agree that this is in the nature of an execution; but yet it is personal; and I do not know that it is a *lien* upon the assets.—Mr. J. *Wilmot* concurred; and said, he had no doubt about it. He thought the intention of the special case, which states a particular question, appeared to be, to submit this question only to the court. As to the objections that have been made to the rate; the first is of no great importance: For though you cannot make a rate to reimburse overseers; yet the overseer may immediately, whilst in office, reimburse himself out of the next money raised for the rate. As to the second, he said, he believed that whatever the law might be, the practice was, not to make these rates monthly. On the merits: It is not stated in the case, that a demand was made even upon *Vesey* (the person assessed), and that he refused payment; though it is so recited in the *warrant*. But that is not material. For I have not the least doubt, but that the representative ought to have been convened before the justices, and asked, what he had to say why he should not pay the rate assessed upon *Vesey* his intestate. The case seems to be like a *scire facias* upon a judgment: Upon which, execution cannot be sued out against the representatives, without asking

* Mr. *Bishop* denied this.

them what they have to alledge why it should not be taken out. At the time of the teste of the warrant, they were the goods and chattels of the representative. If the teste had been prior to the death, they would have been the goods and chattels of the deceased. But if tested after his death, they are not his goods and chattels, but the goods and chattels of the representative. Therefore if the money had been demanded of the representative, I should have had great doubt, whether this warrant and distress would not have been good. For I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at. For though it may be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And though he be called an offender, if he refuse to pay it, yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken into execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience I know it to be the case, that these payments by executors or administrators are often allowed to go in discharge of the assets of the testator or intestate; though I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence, to put it into the power of justices of the peace to determine upon the administration of assets, as to the course in which they are to be administered. In a case of *Wallis and Hewit*, at *Guildhall*, at the sittings after *Hilary* term, 5 G. 2. before L. Ch. J. *Eyre*, in an action of trespass, two aldermen of *London* had made a warrant to distrain a man for a poor rate. The man died intestate. But before that, there had been a demand made upon him, and refused by him, and a warrant of distress granted upon his refusal. And then he died.—*Eyre* Ch. J. held that a distress could not be made after his death; or if it could, yet the representative ought to have been summoned: And he held the property to be changed. A case was made for the opinion of the court of common pleas: But I could not hear what became of it.—L. Ch. J. *Eyre* was a great lawyer. It would be strange, that a distress should be taken upon a man's goods without hearing him. And it would make great confusion in the administration of assets. He may have paid or retained judgment debts, prior to this distress for the rate.—*Mr. Gould* was retained to take notes for the defendants. But he said, that if *Mr. Norton* insisted upon the want of a demand from the representative, he could not pretend to maintain the case on the part of the defendants.—

Mr.

Mr. J. Denison and Mr. J. Wilmot said, That this was an essential circumstance.—And by the court: (L. Mansfield Ch. J. and Mr. J. Foster being absent) judgment was given for the plaintiff the administrator. 2 Burr. 1152. 1 Bl. Rep. 284. 1 Bott. 255. pl. 258.

[Note, The arguments in this case are here recited somewhat at large, in order to bring in as much light as may be upon the subject; especially as no other case hath occurred, wherein this point hath been considered. And this particular case, as appears, was determined on its own peculiar circumstances, namely, for want of summoning the administrator. So that the principal point seemeth yet to remain undetermined, which includes in it these particulars: 1. Where the warrant of distress is made out during the lifetime of the person assessed, whether the officers can follow the goods into the hands of the administrator or any other, without taking notice of any person as executor or administrator? 2. Where the warrant of distress is not made out till after the death of the person assessed, whether on summoning the administrator, and refusal by him, the officers can distrain the goods in the hands of such administrator? 3. Whether the administrator himself may be assessed in a succeeding rate, as for arrears; and on the assessment being confirmed at the sessions upon his appeal, whether distress may be made as of his own goods, and whether for defect of distress he may be committed? 4. In what course of administration such assessment shall be estimated? And if the administrator shall plead before the justices debts of an higher nature, or insufficiency of assets, whether and how far the justices are to take notice of such plea, and how or in what manner they shall determine the same?]

E. 5 G. R. v. *Uttoxeter*. Upon great debate, and search after precedents, it was held, that a *certiorari* would not lie to remove the poor rate itself, the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be required to be sent up, great inconveniencies and delays would follow. 2 Str. 932. *Cases* of 8. 317. 1 Bott. 292. pl. 305.

E. 7 G. 2. K. v. the Justices of *Salop*. The true objection against a *certiorari* is, that if rates were removable, the poor might be starved whilst the rates were depending, and therefore the court, from the great inconvenience that would attend the removal of rates, have refused to do it. 1 Sess. C. 201. 2 Str. 975. 1 Bott. 293. pl. 306, by the name of R. v. *J. of Shrewsbury*.

10. *Taxing others in aid.*

If the said justices do perceive that the inhabitants of any parish are not able to levy among themselves sufficient rates for the purposes aforesaid, then the said two justices (1 Q. B. 1803) may rate and assess as aforesaid, any other of other parishes within the hundred, to pay such sums to the wardens and overseers of the said poor parish, for the purposes, as the said justices shall think fit. 43 El. c. 2.

That the inhabitants of any parish are not able to levy rates for the purposes aforesaid.
The case was thus: There were two villis in one hundred; the one was very rich, and the other very poor; and further, the rich vill was not able to pay half so much as the poor vill did. Objected, 1. One vill ought not to contribute to another, because the statute mentions only one vill. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; viz. because the rich vill is not able to pay half so much as the poor vill does, without which it is not possible for either vill to pay any thing to the poor.—By the court, As to the first objection, surely this will come within the equity of the statute, though the statute only mentions one vill: and it is highly reasonable, that the rich vill should contribute to another in the same parish. The second objection must be quashed on the second objection.

And the justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. 2 *Salk.* 480.

Any other of other parishes] *M.* 32 *G.* 2. Resolved, That the justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. *Comb.* 309. 1 *Vent.* 350.

The rate in aid may be on particular persons.

T. 12 *G.* *R. v. Boroughfen.* There was a taxation of several persons in a parish: Objected, that it should be of all the persons in a particular place or parish.—The court thought it unreasonable, that several persons in a parish should be charged, and not all; but that the words of the act are very strong: and did not quash the order for this objection. *Foley*, 29. 1 *Bott.* 351. *pl.* 433.

Within the hundred] *T.* 9 *An. Boroughfen and St. John's.* Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole court. *Foley*, 27. 1 *Bott.* 348. *pl.* 424.

It must appear in the order that the parish is within the same hundred.

But query this case? In *R. v. St. Helen's*, *T.* 42 *G.* 3. it was cited to this point, when *L. Ellenborough C. J.* observed, that the diversity of name imports diversity of place, unless the contrary be shewn. *MSS.* 1 *Nel. P. L.* 118 (n). 1 *Edit.*

H. 8 *An.* Motion to quash an order of two justices, which was made to assess the parishes of *St. Stephen* and *St. Mary Magdalen* in *Norwich* in aid of the parish of *St. Benedict*, which was not able to maintain its own poor. Objection: These parishes are not in the same hundred; it is in the county of the city of *Norwich* where there is no hundred, so the justices have no jurisdiction.—And by *Holt Ch. J.* The order must be quashed. *Foley*, 31. 2 *Bott.* 350. *pl.* 431. 2 *S. C. in Id.* 359. *pl.* 438.

L. 31 *G.* 2. *R. v. the Tithing of Milland.* Two justices tax the inhabitants of the tithing of *Milland* in aid of the parish of *St. Peter's Cheesehill* in the same county. The sessions confirm the order, setting forth, that the tithing of *Milland*, and the parish of *St. Peter's Cheesehill*, both lie in the same liberty of the *soke* where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, though called by another name. And the court held, they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. And the orders were affirmed. 1 *Burr.* 576. 1 *Bott.* 354. *pl.* 440.

Any division which is equivalent to a hundred is within the equity of the statute.

A parish in a county cannot rate in aid a parish in a borough.

In the case of *R. v. T. Holbeshe esq. and another*, it was determined, that county justices cannot rate a parish within their jurisdiction in aid of another parish, lying within a borough which has an exclusive jurisdiction. 4 *T. R.* 778. 1 *Bott.* 354. *pl.* 441.

The order must be for a time limited.

As the said justices shall think fit] *E. 12 G. R. v. St. Mary's in Marlborough.* An order was made for a neighbouring parish to contribute *so long as we the said justices shall think fit.*—But by the court: It must be quashed; for the discretion that is left in the justices, is not to make a perpetual order, which this would be. 2 *Str.* 700. 1 *Bott.* 349. *pl.* 428.

The sum may be imposed in gross for a year.

M. 6 W. R. v. Knightly. A sum in gross was taxed upon a neighbouring parish for a whole year; which was objected to as unreasonable, because their ability may change: nevertheless the order was confirmed. *Comb.* 309. 1 *Bott.* 347. *pl.* 421.

The order must be to raise a sum certain.

T. 6 G. R. v. Telscombe.—By the court: The order for the contributory parish to make a rate at 6d. in the pound is ill for uncertainty; it should have been, to raise such a sum certain. Quashed. 1 *Str.* 314. 1 *Bott.* 348. *pl.* 426.

The sum may be in gross.

T. 12 G. 2. Case of the parish of St. Peter and Paul in Marlborough. Two justices, reciting the inability of the parish of *St. Mary* to maintain its own poor, order the parish of *St. Peter and Paul* to contribute 60l. for the maintenance of the poor of the other parish: An objection being made to their ordering such a gross sum, the court held it in that respect to be well. 2 *Str.* 1114. 1 *Bott.* 349. *pl.* 429.

County contributory.

And if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices at their general quarter sessions shall rate and assess as aforesaid any other of other parishes, or out of any parish within the county. 43 *El. c. 2. s. 3.*

T. 3 G. 1. R. v. Percivall. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge people out of the hundred, till two justices, have inquired whether any parish in the hundred can contribute: The first application to be to two justices, and the second to the sessions.—*Parker Ch. J.* I do not see to what purpose it would be, for the two justices to make an order, only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions

sessions must inquire into the truth of it; and if no order appear which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred.—*If the said hundred shall not be thought by the said justices able,—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication. Eyre J.* Here are two jurisdictions, that of the two justices, and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from any adjudication of two justices, for that would be to appeal from a nullity. And the order was confirmed. 1 Str. 56. 1 Bot. 352. pl. 435.

And in *R. v. Eastchurch. H. 9 W.* it was decided by Hult. C. J. that the session cannot make an original order upon a parish within the hundred. 1 Bott. 350. pl. 432.

Sect. III. Of the Relief of the Poor.

This subject may be classed under four distinct heads; as,

1. Of the liability of parents and children to maintain each other.
2. Of the order of maintenance.
3. Of persons deserting their families.
4. Of the relief and ordering of the poor.
5. Incorporated districts.

1. How far parents and children are liable to maintain each other.

The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person, in that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell, in their sessions shall be assessed, on pain of 20 s. a month. 43 El. c. 2. l. 7.

Which penalty shall go to the use of the poor of the same parish, and be levied by some or one of the churchwardens or overseers by warrant from two such justices (1 Q.) by distress; or in default thereof any two such justices may commit the offender to the com-

gaol, there to remain without bail or mainprize, till the said
 tures shall be paid. l. 2. 11.

father and mother] *T. 9 An. 2. v. Clentham.* It was
 ed to quash an order upon the father-in-law, to main-
 his wife's daughter, his wife being dead. — By the
 le court: The husband ought to provide for the daughter-
 w during the wife's life, in the right of his wife; but
 n the wife dies, the relation is dissolved, and he is not
 ny means obliged to provide for the daughter-in-law
 her mother's death. *Foley, 39. 1 Bott. 371. pl. 468.*

o in *E. 10 An. 2. v. St. Botolph's Aldgate.* The single
 tion was, Whether the husband shall be chargeable to
 tain his wife's children by a former husband? And it
 resolved he was during the wife's life, in her right,
 not after. *Foley, 42. 1 Bott. 372. pl. 470.*

here was an order upon the mother, who was married
 second husband, to maintain her children which she
 by the former husband. — But by the court; A feme-
 rt cannot be charged, but they ought to have charged
 husband. *Foley, 44.*

ut notwithstanding the above, in the case of *Tubb and*
rs v. Harrison and another, *M. 31 G. 3.* Which was
 ction on a covenant, in which the defendants who were
 er and son (after reciting that differences had arisen
 een the son and his wife, and that they had agreed to

accumulate for them in the mean time, and he made no application to chancery for an allowance out of the fund, as he might have done. *Cooper v. Martin*. 4 E.R. 76. 1 Bott. 377. pl. 479.

M. 7 G. 2. R. v. Dempson. It was moved to quash an order upon the father to pay a certain sum weekly to his son's wife, his son having run away from her as soon as he married her, and she having had a child in the mean time. To this order two exceptions were taken: First, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the court, that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, it was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *R. v. Munday* (hereafter following); and the court was of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 Barnodist. 329. 364. Note; Sir John Strange in his report of this case says, that the order was for the father to maintain his son's wife, after a divorce *a mensa & thoro*, for adultery. 2 Str. 955. 1 Bott. 373. pl. 476.

Son's wife, the son being run away, not to be maintained by the son's father.

Grandfather and grandmother] *M. 7 C. R. v. Reeve*. The reputed grandfather or grandmother are not within the statute; for a bastard is *filius populi*. 2 Bulst. 344. 1 Bott. 362. pl. 447.

Grandfather and grandmother.

H. 7 Cba. Gerard's case. If a man marry a grandmother, and have an estate with her in marriage, for this estate he shall be charged to be contributory towards the relief and maintenance of the grandchild within the meaning of the statute: but otherwise it shall be if he have not any estate or advancement by his marriage with her.—By *Whitlocke and Croke Js.*—But by *Croke J.* He shall be charged with keeping the grandchild during the life of the grandmother his wife; and if she die he shall not be charged after her death. 2 Bulst. 346. 1 Bott. 368. pl. 463.

But by *Holt Ch. J.* If the wife die, he must maintain the grandchildren though the relation be determined. And he said, that in *Gerard's case*, who married the grandmother of a poor person, though she died and so the relation was determined, yet the statute was to be construed by equity, and that he was a grandfather within the statute. *Comb.* 321.

405.

But in the case of 2 Bulst. 346. it does not appear that the grandmother was dead; nor is there any resolution, the judges differing in their opinions. 16 Vin. 417.

H 4

Upon

Upon the whole the distinction seems to be this: If a mother or grandmother marry again, and were before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this being a debt of hers when single shall like others extend to charge the husband; but at her death, the relation being dissolved, the husband is under no further obligation. 1 *Bl. Com.* 448. See, however, the above cases of *Tubb v. Harrison*, and *Cooper v. Martin*.

And though the father be living, yet if he be unable, the grandfather being of ability, may be compelled to keep the grandchild and also to pay so much money as the justices shall think reasonable for the time past. *M. 6 Ann. 2. v. Joyce.* 16 *Viner*, 423. 1 *Bott.* 372. *pl.* 471.

A son-in-law is not obliged to maintain his wife's mother.

And children] *T. 5 G. R. v. Munday.* Order reciting that *Munday* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her.—By *Pratt Ch. J.* The cases which have hitherto been, were either where the judges were divided, or the matter came not directly in question, or was only a case at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion, that the son-in-law is not bound, either within the words or intent of the statute, which provides only for natural parents. By the law of nature a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this case. And the order must be quashed. 1 *Str.* 190. 1 *Bott.* 372. *pl.* 473. This case was acknowledged by Lord *Kenyon* in *Tubb v. Harrison*, *ante*.

Grandchildren.

In the case of *Walton v. Spark*, *E. 7 W. Holt Ch. J.* said, That the word *children* in the statute extends to *grandchildren*; because there is the same natural affection. *Cases of S.* 210. 1 *Bott.* 370. *pl.* 465. (by the name of *Waltham v. Sparkes*.)

But no case hath occurred, wherein the same hath been judicially determined. And perhaps there may be some doubt as to this point. Natural affection descends more strongly than it ascends. And it is observable, that whereas the statute of the 39 *Eliz. c. 3.* did only enact that *parents* and *children* should mutually maintain each other, this statute of the 13 *Eliz.* enlarging this branch, extends it to *grandfathers* and *grandmothers*, but doth not specify *grandchildren*; by which it may seem that the parliament did not intend that the obligation should extend to them.

2. Of

2. Of the order.

Of every poor, old, blind, lame, and impotent person, or other poor person not able to work] *M. 13 W. St. Andrew's Under-shaft v. Jacob Mendez de Breta.* The defendant being a Jew had an only daughter, who was converted from Judaism, and embraced Christianity, Whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20s. a month. But because they did not allege that she was poor, or likely to become chargeable, the order was quashed. 1 *L. Raym.* 699. 1 *Bott* 365. pl. 453.

The order must set forth, that the person is poor, &c. and not able to work.

R. 1 G. R. v. Gulley. It was moved to quash an order of sessions. The order set out, that one *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2s. 6d. a-week till further order. Objected, It did not appear that she was lame, blind, or unable to work; so that though she was in a destitute condition, it might be because she would not work: And upon this exception the court quashed the order of sessions. *Foley*, 47. 1 *Bott.* 366. pl. 457.

Being of a sufficient ability] *H. 12 An. 2. v. Halifax.* Order for the father-in-law, to pay so much a week to his daughter-in-law, was quashed, because it was not said that he was of a sufficient ability. *Cases of S.* 52. 1 *Bott.* 360. pl. 455.

Must be of sufficient ability.

In that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell, in their sessions shall be assessed] *E. 5 An. Jenkin's case.* An order of sessions was made, that the defendant shall pay 2s. a week towards the support of his father, till that court should order the contrary. Which was held good because it was indefinite, and no set time limited; and if an estate happened to fall to him they might apply to the justices; otherwise, if a time was limited. 2 *Salk.* 534. 1 *Bott.* 365. pl. 454.

Indefinite order is good.

By the justices of that county where such sufficient persons dwell] Therefore if a child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather live in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make the order. 2 *Bull.* 346.

The order must be made by the justices of the county where such sufficient person dwells.

In

Pauper not to be sent to such sufficient person.

In their sessions shall be assessed] *T. 9 An. 2. v. Jones.* There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. — By the whole court: They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a-week. *Foley, 41. 1 Bott. 364. pl. 451.*

Pauper must be chargeable.

And it is said, that in the order of sessions it ought to appear that the party to be relieved is become chargeable to the parish; for unless he be so, the parish has no ground of complaint. *16 Vin. 424. R. v. Tripping. 1 Bott. 366. pl. 416.*

And the order may be that the grandfather shall pay so much for the time past for wherever the grandchild was chargeable. *R. v. Joyce. 16 Vin. Abr. 423.*

Penalty of 20s. a-month.

On pain of 20s. a month — to be levied by distress] *T. 32 & 33 G. 2. R. v. Robinson.* The defendant was indicted for refusing to obey an order of sessions, for maintaining his two infant grandchildren. It was moved in arrest of judgment, and urged, that this is a new offence: and where a statute creates a new offence, and gives a particular penalty, and specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. By *L. Mansfield Ch. J.* The rule is certain, that where a statute creates a new offence, by prohibiting and making unlawful any thing which was lawful before, and appoints a specific remedy against such new offence by a particular sanction and particular method of proceeding; that method must be pursued, and no other: But where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute; because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case a remedy existed before the statute of the 43 *Eliz.* For disobedience to an order of sessions is an offence indictable at common law. So that here are two remedies; one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made; the other, to distrain for the 20s. penalty after neglect of payment for a month. The former method has been taken in the present case: And there is no doubt but that an indictment will lie for disobeying an order of sessions. And the court were unanimously of opinion, that the judgment ought not to be arrested. *2 Burr. 799. 1 Bott. 380. pl. 480.*

3. *Of persons deserting their families.*

By 1 *Jam. c. 4. s. 8.* People able to labour, running away out of their parish, and leaving their families upon the parish, shall be taken and deemed incorrigible rogues. And if they threaten to run away, and leave their families as aforesaid, the same being proved by two sufficient witnesses upon oath, before two justices of the peace, the persons so threatening shall by the said two justices of the peace be sent to the house of correction, (unless he or she can put in sufficient sureties for the discharge of the parish,) there to be dealt with, and detained as a sturdy and wandering rogue, and to be delivered at the said assembly or meeting, or at the quarter sessions, and not otherwise.

And the said churchwardens and overseers shall be accountable to the justices at the quarter sessions for all such money as they shall so receive. *s. 2.*

Stable v. Dixon. H. 45 G. 3. The plaintiff declared in covenant for a year's rent. To the declaration there were four several pleas, of which the last only is material here. In this the defendant pleaded as to 7l. 16s. parcel of the rent, that before 25th March 1803, (when the rent became due) the plaintiff had gone away from his place of abode (at Corney) into some other place, leaving his wife chargeable to Corney; that he continued away from the 24th June 1801, to the time of the action brought, and that during all that time she continued so chargeable; that it thereupon was necessary that she should be maintained by the parish: whereupon, upon application of the churchwardens of the parish, a warrant was directed by two justices to the said churchwardens and overseers, whereby (reciting as usual) they the said justices authorized and commanded the said churchwardens and overseers of Corney to receive the annual rents and profits of the lands and tenements of the plaintiff at Broomhill in the parishes of B. and W. in the county of Cumberland, (the same being the lands and tenements demised to the defendant) for and towards the discharge of the said parish of Corney, for the providing for the plaintiff's wife, &c. That on the 13th July 1801, the order was, pursuant to the statute, confirmed by the court, and the court did then and there order the said churchwardens and overseers &c. to receive 7l. 16s. rent, of the rents and profits of the lands and tenements of the plaintiff at B. in the parishes of B. and W. for and towards the discharge of the said parish. And payment thereof by defendant. To this the replication was, (*inter alia*) that on the 1st of October 1801, the said 7l. 16s. in the said order of sessions mentioned, was paid by the defendant to the then church-

churchwardens and overseers of Corney, pursuant to the said order, and that on the 25th March 1802, the sum of 7l. 16s. was allowed by the plaintiff to the defendant of the rent. To this replication it was by the defendant rejoined, that the said sum of 7l. 16s. so mentioned in the plea to have been so paid, was another and a different sum of 7l. 16s. than the sum of 7l. 16s. so deducted and allowed by the defendant, viz. for the 2d year's payment under the said order, as in the said plea mentioned. To this there was a demurrer, and a binder in demurrer. In support of the demurrer the following objections were made: 1st. That the original order was void; 2d. That the sessions had no original jurisdiction, and that therefore nothing done by them upon a void order could make it good. 3d. That if the order of sessions was good, it had been complied with by plaintiff. Upon the first objection it was argued that the original order was void, as being issued, to seize the rents and profits for future expences, which might be prospective, still it did not ascertain the amount of relief required by the parish, conformably with the statute "so much" in the statute. To this was cited *R. v. L. Raym.* 858. Upon the 2d it was said, that the sessions had it only in their power to confirm the order, and not to make, and (perhaps) vary the sum before directed to be paid. Upon the 3d, That if the sessions could remedy the defect in the original order by ascertaining the sum

act expressly says, the officers shall take *so much* as the justices shall order. The original warrant then being made in the exercise of an indefinite instead of a limited authority, and being void in that respect, the next question is, whether it were capable of receiving confirmation from the sessions. And assuming that it could, as capable of limitation in respect of the sum to be taken by the parish officers, (for they seem there to have abandoned the ground of an indefinite seizure), then can the order of sessions be sustained beyond the terms of it, as an order to receive the sum of 7l. 16s. Admitting that it might be good to that extent as an order to receive an indefinite sum (subject however to the objection to it as a confirmation of an original indefinite order of seizure), the answer is, that the sum is already paid and allowed: but taking it as it is now contended for, as an order to receive that sum annually out of the rents and profits without any limitation of time, the objection applies, that for want of such limitation as, "till some other order be made," it is void by the authority of the case mentioned. Therefore, unless the order of sessions be understood as limited to raise 7l. 16s. once for all, that would be invincibly bad; and if so understood the order has been satisfied. *Grose J.* agreed. And by *Lawrence J.* If the order of sessions had intended that more than one sum of 7l. 16s. should be taken, they should have said so, more distinctly, by adding the word "*annually*" or "*till further order*." Judgment for the plaintiff. 6 E.R. 163.

Parents running away.

Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children upon the charge of the parish, although such persons have some estates, which would ease the parish of their charge in whole or in part: It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as two such justices shall order and direct towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices there to make an order for the churchwardens or overseers to dispose of such goods or chattels by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid. 5 G. c. 8. s. 1.

And further, to compel husbands and parents to maintain their own families, the law hath also provided, that all per-

Parents running away deemed rogues and vagabonds.

sons who *run away* and leave their wives and children they become chargeable to any parish or place, the rogues and vagabonds, and punished as such by act of the 17 G. 2. c. 5.

And by the same act, all persons who threaten and leave their wives or children to the parish, deemed idle and disorderly persons; and shall, before one justice, by confession or oath of one committed to the house of correction, there hard labour for any time not exceeding one month.

And whereas several persons by their wilful neglect permit their wives and children to become to their parish: It is enacted, that if it shall be to two justices, that any such person doth not means to get employment, or if he be able to neglect of work, or by spending his money in places of bad repute, or in any other improper do not apply a proper proportion of the money towards the maintenance of his wife and family they or any of them, become chargeable to the parish shall be deemed an idle and disorderly person, accordingly. 32 G. 3. c. 45. s. 8. (a)

Form of an order to seize the goods, and rents of the lands of parents or husbands

tenements of him the said A.O. at — as aforesaid, (a) for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children: And with this warrant you are to appear at the next quarter sessions of the peace to be holden for the said county, and certify then and there what you shall have done in the execution hereof. Given under our hands and seals, at — in the said county, the — day of — in the year —.

(See the preceding case of *Stable v. Dixon*.)

FOR the further maintenance of the poor, there are many fines and forfeitures payable to their use; as for swearing, drunkenness, destroying the game, and in many other instances, which are to be found under their proper titles.

And also parts of wastes, woods, and pastures, may be inclosed for the growth and preservation of timber and underwood for their relief, as is set forth under the title **WOOD**,

4. Of the relief and ordering of the poor.

By the several statutes all along, the poor were to resort or be sent to their own parishes to be relieved; and in the case of *Clypton v. Ravisslock*, E. 11 Ann. it was adjudged as follows: There was an order reciting, Whereas *John Saunderson* and his wife are last settled in *Clypton*; these are to order you the churchwardens of *Clypton* to repair to the parish of *Ravisslock*, and to relieve them, being so sick that they cannot be removed.—By the court: The justices have no authority to send for officers out of another parish, but the parish where the poor reside are bound to maintain them as long as they continue with them. *Cases of S. 49*. But in the case of *Darlington v. Hemlington*, H. 17 G. 3. where two bastard children, settled at *Darlington*, resided with their mother as nurse children in the parish of *Hemlington*, where the mother was settled: it was determined that the parish where the children's settlement was should maintain those children in that other parish.

Poor to be maintained within their own parishes;

excepting in the case of bastards, being nurse children.

By the 43 El. c. 2. The churchwardens and overseers, with the consent of two justices (1 Q.) shall take order from time to time, for setting to work the children of all such, whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or unmarried having no means to maintain them, and using no ordinary and

Order to be taken therein.

(a) If the order extend to lands, then say, "until further order made."

daily

daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work. s. 1.

And the said justices, or one of them, shall send to the house of correction, or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid. s. 4.

Poor and not able to work] *M. 3 G. R. v. the Inhabitants of Highworth.* There was an order to pay 3 s. weekly to a poor person, by the parish of *Highworth*, so long as he shall continue poor. It was objected, that by the statute it ought to appear that they are poor and impotent.—*Parker Ch. J.* I favour these orders as much as I can, because nobody takes care to draw them up for the poor. But it must be quashed. 1 *Str. 10.* 1 *Bott. 402. pl. 525.*

On the authority of this case, *E. 3 G. R. v. Stokegurfey*, an order was quashed for the same fault. So *E. 4 G. R. v. Tipper*, an order to maintain a daughter-in-law.

Sessions have no power to order surgeons' bills to be paid.

For the necessary relief] *E. 1 G. R. v. Colbitch.* An order of sessions was made upon the overseers of this parish, that they should pay a surgeon his bill for curing certain poor under their care. The court said, that the sessions have no power to make such orders, and so quashed it. 1 *Barnardist. 46.*

Not the justices.

M. 6 G. 2. R. v. Woodsterton. An order was made by two justices upon the officers of the parish of *Woodsterton* for paying 5l. upon account of a poor inhabitant of that parish when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account; which order was confirmed at the sessions. It was moved to quash these orders. And upon shewing cause it was urged, that the justices have only power to order parish officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the present case the parish officers have actually given the party relief. They employed a surgeon, and a nurse, to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter. And the court were of opinion that these orders should be quashed. 2 *Barnardist. 207—247.* 1 *Bott. 404. pl. 530.*

Setting up trades.

By the 3 C. c. 4. The churchwardens and overseers may, by the consent of two justices (1 Q.) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery or occupation, only for the setting on work, and better relief of the poor. s. 22.

Erecting cottages.

The churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or

or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor. 43 Eliz. c. 2. s. 5.

It shall be lawful for the churchwardens and overseers, in any parish, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry, or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour and service of any such poor person, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons who shall be there kept or maintained. And if any poor person shall refuse to be lodged, kept, or maintained, in such house or houses, he shall be put out of the parish book, and shall not be entitled to receive relief from the churchwardens and overseers. 9 G. c. 7. s. 4.

Overseers may contract for the maintenance and employment of the poor.

The churchwardens and overseers] In the case of *R. v. Besson*, E. 36 G. 3. On a rule to shew cause why a mandamus should not issue against one of the overseers of the poor of the parish of *Drayton and Hales*, for refusing to pay his proportion of parish money in his hands to the person who had contracted to maintain the poor: The question was, Whether it was necessary that all the churchwardens and overseers should concur in making the contract, or the majority of them would bind the rest? It appeared that the churchwardens and overseers, with the consent of the major part of the parishioners or inhabitants in vestry assembled, in pursuance of public notice for that purpose given, had contracted for the keeping, maintaining, and employing the poor with one *Atberton*, but that three churchwardens and two overseers only agreed to the contract, and one overseer refused to join.—But the court ordered the rule to be made absolute to compel that overseer to pay his proportion to *Atberton*. 3 T. R. 592. 1 Bott. 420. pl. 538.

A majority will bind the rest.

M. 7 G. 3. R. v. Carlisle. The defendant was indicted for disobeying an order of sessions. The case was *Jane Carr* the pauper, having been delivered of two bastard children,

Faupers wanting relief, and refusing to go into the parish

workhouse, the parish officer may refuse giving weekly allowance.

was taken into the poor house of the parish of *St. Mary's* in *Carlisle*, which had been there established according to the 9 G. c. 7. There she and her children were maintained for a year and an half. Then the parish officers agreed to allow her one shilling a-week, towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poor house. She prayed them to take one child, and said she would take care of the other. That being refused, she offered to take sixpence a-week. But the parish officers persisted in giving her no relief, unless she would come again into the poor house. Whereupon she applied to the general quarter sessions for the county of *Cumberland*; who made an order on the churchwardens and overseers to pay her one shilling a-week, towards the maintenance of herself and her two bastard children, until further order. She served the defendant, being one of the overseers, with the order, and demanded payment, which he refused, but at the same time offered (as he had done several times before the obtaining the said order) to take her and her children into the poor house. The question reserved at the assizes for the opinion of the judges was, Whether under these circumstances the defendant was by law empowered to refuse payment of such weekly allowance? And the case being laid before the judges they were all of opinion, upon considering the words of the statute, that under the circumstances of this case, the defendant was by law empowered to refuse payment of such weekly allowance; cited in *R. v. Haigh*. 3 T. R. 637.

M. 11 G. 3. R. against Winslip and Grunwell, overseers of the poor of the township of *Corbridge*, in the county of *Northumberland*. In the said township a regular poor house had been established; and the several persons who received allowances from the said township, had one months' notice given them to repair to the said poor house, to be maintained and provided for therein; and that from the expiration of the said month, the allowance to the said several persons from the said township should be no longer paid. *Margaret Richlieu* refused to go into the poor house, and the overseers refused to pay her her allowance. She applied to the sessions, but it did not appear she had made oath before the sessions, pursuant to 9 G. 1. c. 7. f. 1. Afterwards, at a general quarter sessions of the peace holden in and for the said county, an order was made in the words following; that is to say, *Margaret Richlieu* having an allowance of 2s. a-week payable to her out of the township of *Corbridge*, of which the sum of 6l. 4s. is now in arrear, it is ordered, that the same be immediately paid to her: And it is also

ordered, that the said allowance of 2s. a-week be continued to be paid by the said township of *Corbridge* to the said *Margaret Richlieu*; the said township appearing, and not shewing sufficient cause to the contrary. The overseers refused to pay the same, insisting that she should go into the poor house. Upon which they were indicted. And a verdict was given against the defendants the overseers, subject to the opinion of the court of king's bench. Upon hearing the cause, the court thought the general question to be of vast consequence to the system of the poor laws, but they gave no opinion upon the merits; holding the sessions' order to be bad and illegal upon the face of it: The sessions cannot make such an original order. And judgment was entered for the defendants. 5 *Burr.* 2677. *Cald.* 72. 1 *Bott.* 404. *pl.* 531.

H. 20 G. 3. R. v. North Shields. By order of a justice the parish officers of the township of *North Shields* were directed to pay to *Ann Irwin* of that township, wife of *Thomas Irwin*, the sum of 2s. 6d. weekly, until such time as they should be otherwise ordered, for the support of her three children by her said husband; one aged six years, one three, and one fourteen months. The parish officers appealed to the quarter sessions, where the order was confirmed, and a special case stated to the following effect: There was, at the time of making the order, within the township, a poor house, established according to the statute 9 *G. c. 7.* into which the parish officers were willing to receive the pauper, with her three children, and offered so to do; but she refused to go with her said three children, who were of the ages mentioned in the order. She had another child of eight years of age, for whom she did not seek relief; neither did she seek relief for herself, nor was there any order for her. Her husband was a mariner, and prisoner in *France*, and his said wife not able to provide for the said three children. The case concluded, that these children, being nurse children, the opinion of the court was, that they ought not to be separated from their mother; and that the mother, not seeking relief herself, was not compellable to go into the workhouse.—Upon a *certiorari*, and a rule to shew cause why both the orders should not be quashed, it was argued, in support of the rule for quashing them, that the statute of 9 *G. c. 7. s. 4.* was to secure to parishes a benefit from the labour of persons asking relief. If parents receive assistance for the maintenance of their children, that in truth is a relief to them. The case therefore states improperly, that the wife had not asked relief for herself; she did *virtually*, by asking it for her children, whom she, if able, was bound to maintain. And the case of *R. and*

Whether a mother asking relief for her children be compellable to go with them to the poor house?

Carlisle was relied on as in point. On the other side it was contended, that as the mother had not asked relief for herself, and the order was only for the support of her children, she was willing to let *them* go into the workhouse; and although nurse children cannot be separated by any compulsory order from their mother, she may by her consent permit the separation if she thinks it for their advantage. In the case of *R. v. Carlisle*, the relief asked, and granted by the order, was partly *personal*, and therefore it was distinguishable from this case, and within the statute.—*L. Mansfield* was not present during this part of the argument.—*Willes J.* said, this was a humane order, and he wished to support it. He did not think the words of the act in the way, and inclined to adopt the distinction made by the counsel between this case and that of *R. and Carlisle*.—*Asbhurst J.* thought the act extends to the present case: That maintenance for the children was relief to the mother. There might be great inconvenience if the court were to adopt the other construction. One object of the statute was to encourage industry, by holding out the disgrace of going into a workhouse; and if parents could obtain a maintenance for their children without being compellable to go to the workhouse, idleness would be thereby promoted among artificers and manufacturers.—*Buller J.* on the contrary, thought the distinction between this case and that of *R. and Carlisle* to be clear. The act was meant in case of parishes, but the effect would be quite the reverse, if, when one of a numerous family wants relief, the whole must go to the parish workhouse; and, on the other hand, that the parish is not entitled to the labour of a whole family, because one of them might want relief.—The case stood over for farther argument, *Willes J.* expressing a wish that it might be compromised.—And now he delivered the judgment of the court. We think it unnecessary to give an opinion on the question which has been argued in this case, because I and my two brothers are satisfied that no appeal lies from an order of maintenance. The statute 3 *W. c. 11. s. 11.* gives a concurrent jurisdiction, in the making orders for the relief of the poor, in or out of sessions, and doth not authorise an appeal. The act of 9 *G. c. 7.* made no alteration in this respect. The reason for not giving an appeal is, that the pauper might starve while the cause was in suspense. We have spoken to several gentlemen very conversant in sessions law, and none of them ever heard of such an appeal.—And the order of sessions was quashed (because they had no jurisdiction), and the original order affirmed. *Doug. 316. Cald. 68.*

[Upon

[Upon this Mr. Douglas observes, that the words of the 3^d W. c. 11. are, "by authority under the hand of one justice residing within the parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions." This, he says, it should seem, must mean by order of the court of quarter-sessions, not of justices as individuals, when they happen to meet at the quarter-sessions. Therefore he makes a query concerning the case of *R. v. Winslip and Grunwell*, where the court is stated to have held, that the sessions could not make an original order of maintenance.—Unto which it may be added, with respect to this last case of *North Shields*, that the great fundamental statute of 43 El. c. 2. s. 6. enacts, that, "if any person shall find himself aggrieved by any thing done by the churchwardens and overseers, or by the justices, in relation to the relief of the poor, he may appeal to the general quarter sessions, whose order therein shall be final." Which, by the rule that acts *in pari materia* are to be taken together and considered as one entire act, may seem to include this case concerning the order of maintenance. The *Carlisle* case above mentioned was upon an original order at sessions, in which the jurisdiction was not objected to, but the cause was determined on the real merits. The case of *R. v. Winslip and Grunwell* also was upon an original order of sessions, which order the report says was quashed, because the court was of opinion that the sessions had no power to make such order. This present case of *North Shields* was an appeal against an order of a justice out of sessions, and in this case of appeal likewise the court was of opinion that the sessions had no jurisdiction. From which two last cases it seems to follow, that an order of maintenance by a private justice out of sessions is absolutely conclusive; which imports a power in this respect not usual in other like cases; especially as such justice is required by the statute to be an inhabitant of the parish if any such be there residing, and consequently in all probability essentially interested in the poor rate. As to the matter of practice, it is certain, that nothing is more common at the sessions, than applications for the maintenance of poor persons, as well by original motion, as by way of appeal from the order of private justices. In some places this makes up almost half the business of the sessions, even to a degree of ridicule among the unthinking part of mankind; as if magistrates could be better employed than in relieving the miseries of the distressed. The reason that has been sometimes alleged against removing the poor rate into the courts at *Westminster*, lest the poor might starve before the cause should be determined, doth not hold with regard to appeals

Observations on
the above cases.

st orders of maintenance. The justices' order takes immediately, and continues in force till altered by legal authority. The usual way is, for the justices to the overseer to pay to the pauper so much weekly or wife, *until he shall be otherwise ordered according to law bear the said allowance*, or, more generally, *till further*. And this, if not acquiesced in, brings on an appeal the sessions; where the court enlarges, mitigates, or off the charge, as they shall see cause.]

v. *James Haigh* and another. E. 30 G. 3. The defendants (the churchwarden and overseer of *Shelf* in the Riding of *York*) were indicted for disobeying an order justice, for the payment of a weekly sum to *Mary Gray* the maintenance of her bastard child. At the trial before J. at the *York* assizes, it appeared that the mother ed for relief for her child only; and the question was, whether the defendants were bound to obey the order, as the mother of the child refused to go into the work-house. A verdict was given for the prosecutor, subject to the opinion of the court on the above question. For the prosecutor, *R. North Shields. Cald.* 68. (ante) was relied upon; and for the defendants *R. v. Carlisle*, (ante). — The words of the 1. c. 7. s. 4. are “ in case any poor person in any house where any such house shall be so purchased, shall be to be lodged, kept or maintained in such house, such

acting in and for the district, to give relief to any poor person at his own home, under certain circumstances of temporary illness or distress, and in certain cases respecting such poor person or his family, or respecting the situation, health or condition of any poor-house erected in pursuance of the above act of 9 G. 3. c. 7. although such poor person shall refuse to go into such poor-house : any thing in the said act to the contrary notwithstanding. *§. 1.*

One justice may order relief to paupers at their own homes.

And any justice usually acting in the district where such house is situate, may order relief to any industrious poor person, and he shall be entitled to ask and receive such relief at his own home, notwithstanding any contract for maintaining the poor in such poor-house as aforesaid ; and the church-wardens and overseers are to obey and perform such order for relief given by such justice as aforesaid. Provided that the cause of ordering such relief be assigned and written on each order. *§. 2, 3.*

Provided always, that no such order shall be given, or remain in force for more than one month from the date thereof. *§. 3.*

For not exceeding one month.

Provided nevertheless, that two justices may make any further order for the like purpose, for any time not exceeding one month from the date thereof, and so on from time to time as the occasion shall require, oath being first made as to the need and cause of such relief, and thereon summoning the overseer or overseers to shew cause why such poor person should not be relieved ; in like manner as where there shall not be any such poor house as aforesaid. *Id.*

Two justices may order relief for a further time.

Provided also, that nothing herein shall extend to places where houses of industry have been or shall be provided under the authority of 22 G. 3. c. 83. (a) or of any special act for any parish or place now in force ; but in every such case, such poor persons shall be relieved in the same manner as before the passing of this act. *§. 4.*

Not to extend to houses established by 22 G. 3. c. 83.

By 30 G. 3. c. 49. Any justice of the peace, (or physician, surgeon, apothecary, or officiating clergyman of the parish or place, authorized by a warrant from one justice,) may in the day-time visit any parish work house, or house kept or provided for the maintenance of the poor of any parish or place within the county or division wherein such justice shall reside, and examine into the condition of the poor people therein, and the condition of such house ; and if any cause of complaint shall be found, such justice, or person authorized as aforesaid, may certify the state and condition of such house, and of the poor therein, and of their food, cloathing, and bedding, to the next sessions for the

Justices, &c. may visit parish workhouses.

(a) See this act *post*, head ~~Poor~~ in incorporated districts.

county or division where such house is situate, under his hand and seal; and such justice, or other person authorized as aforesaid, shall cause the overseers of the poor, or master or governor of such house, to be summoned to appear at such sessions to answer such complaint, who, on hearing the parties, may make such orders and regulations for the removing such cause of complaint as to them shall seem meet, and all the parties shall abide by the same. *s. 1.*

Provided, that in case such justice, or person authorized as aforesaid, shall, upon such visitation, find any of the poor afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then if such visitation be made by a justice, he shall apply to another justice of such county or division, and certify to him the state and condition of the poor in such house; or if such visitation is made by such other persons authorized as aforesaid, they shall apply to two justices of such county or division, who may make such order therein under their hands and seals as they shall think proper, until the next sessions, at which sessions they are to certify the same under their hands and seals, who are to make such order for the further relief of the poor in such house as to them shall seem meet. And the charges of relieving such poor shall be paid out of the poor rate of such place, in such manner as such sessions shall direct. *s. 2.*

Provided that the above shall not extend to workhouses regulated by any special act of parliament. *s. 3.*

On an order for relief weekly, the money is due the beginning of the week.

T. 26 G. 3. R. v. John Fearnley. This was a demurrer to an indictment found against *Fearnley*, who was overseer of the poor of the township of *Checkbeaton*, for disobeying an order of two justices, for the payment of 1s. 6d. a-week to *Sarah Firth* for the maintenance of herself and her bastard child. One objection was; there was a mistake in the caption of the sessions where the indictment was found, the word *July* being inserted instead of *October*, which the court adjudged to be fatal. It was also objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the first week. But the court were of opinion, that the sum which was ordered to be paid weekly was due at the beginning of the week. 1 *T. R.* 316. 1 *Bott.* 418. pl. 536.

Two or more places may join.

And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships, or places, with the consent of the major part of the parishes or inhabitants of their respective parishes, townships, or places, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall

be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township, or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes, townships, or places so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed; and if any poor in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not entitled to ask relief:

And it shall be lawful for the churchwardens and overseers of any parish, township, or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township, or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township, or place, for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet; and if any poor person of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such house or houses, he shall be put out of the collection book, and not be entitled to have relief: Provided, that no poor person, his apprentice or child, shall acquire a settlement in the parish, town, or place, to which he shall be removed by virtue of this act; but his and their settlement shall be and remain in such parish, town, or place, as it was before removal. 9 G. c. 7. s. 4.

T. 22 G. 3. R. v. *St. Peter and St. Paul in Bath. William Hill* was removed from *Lyncombe and Widcombe* to *St. Peter and St. Paul*. The sessions confirmed the order, and stated the following case:—That the parishioners of *St. Peter and St. Paul*, in conjunction with the parishioners of *St. James in Bath*, purchased a piece of ground in the parish of *Lyncombe and Widcombe*, and built thereon a house for the reception and maintenance of their poor. And the said *William Hill*, together with the rest of the paupers belonging to the said parish of *St. Peter and St. Paul*, removed to the said house, where they have been maintained ever since, without any charge to the said parish of *Lyncombe and Widcombe*. The said *Hill* and all the other paupers carried with them regular certificates, which were delivered to the parish officers

Whether a poor house purchased under the statute by joint parishes, in a third parish, is not, for the purpose of settlement, a part of the purchasing parish? At all events the paupers are not removable.

officers of *Lyncombe* and *Widcombe*. Notwithstanding which the pauper was removed from *Lyncombe* and *Widcombe*, though he had not been chargeable to that parish.—The sessions confirmed the order, being of opinion, that the pauper was not an object of the certificate act, and consequently not protected by it.—*Heworth* and others shewed cause in support of these orders.—*L. Mansfield* (without hearing the other side) said, To be sure it was a radical defect in the system of the poor laws, more especially in a commercial and manufacturing country, that the poor should be all confined to their respective parishes. Possessed of industry, vigour, and skill, a man who could not find work at home, was prohibited from seeking it abroad. The legislature endeavoured to cure this evil by introducing certificates, under which the pauper is at liberty to go and reside wherever he pleases. And the true principle is, to extend this protection to the utmost latitude. There should be no clog, no restraint. But then the act did not compel the granting of them. The want of workhouses was however soon felt as an inconvenience; they were, not long after, introduced by the legislature; and, if well regulated, a most desirable mode of relief they are; they supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances which have chanced to fall within my knowledge, particularly on the Midland circuit, they have reduced the annual amount of the poor rates one half. But this benefit could not within itself be received by every separate district; for where parishes were small, the expence of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings, within their own limits, yet, where two unite, no restrictions were imposed, the power is general. It is obvious, that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act therefore authorizes the purchase any where; and when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself: which was calculated ultimately

ultimately to reduce expence, as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master. But the objection is not warranted by the certificate act. Whatever might be the leading motive in passing that act, that statute authorizes the whole body of the poor of whatever denomination and with whatever object, to leave their own and remove into any other parish, provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act, and not obliged by the letter, the court will not make an exception of a case, which the act itself has not excepted. The true policy is certainly to enlarge and not to narrow the district within which the poor are to be maintained. As to the objection of its being an injury to property, the introduction of a numerous inhabitaney, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex*. —

Beller J. As to the last difficulty raised, I doubt whether the poor house so occupied, and become in this manner the perpetual property of the united parishes, is not to this purpose rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon the same principle as that of many resolutions in the case of such children born in gaols. — *Willes and Ashurst Js.* concurring, both orders were quashed. *Cald.* 213. 1 *Bott.*

443. pl. 572.

There shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity, and yearly in Easter week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as they shall think fit and allow to receive collection. 3 W. CII. l. 11.

Persons relieved to be entered in a book.

And no other person shall be allowed to receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential diseases, plague, or small pox, for such families only as shall be therewith infected. 3 W. CII. l. 11.

No others to be relieved, but by order of the justices.

And

And no justice shall order relief to any poor person, until oath be made before him of some matter, which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry or other public meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear. 9 G. c. 7. s. 1.

And the person whom such justice shall think fit to order to be relieved, shall be entered in such book, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person of the same parish who is not registered in such book, as a person entitled to receive collection, on pain of 5l. by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by direction of the justices. 9 G. c. 7. s. 2.

Persons relieved to be badged.

Moreover, Every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large Roman P, together with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear any such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged, suspended, or withdrawn, or otherwise by committing him to the house of correction, to be whipt and kept to hard labour, not exceeding 21 days: And if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20s. by distress, half to the informer, and half to the poor. 8 & 9 W. c. 30. s. 2.

Spirituous liquors not to be used in workhouses.

By the 24 G. 2. c. 40. No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor; as is set forth more at large, in the article relating to spirituous liquors, under the title *Excise*.

The above-mentioned statute of the 9 G. c. 7. hath been very beneficial in practice; but the matter seemeth at length to have been carried too far; the overseers in many places having found out a method of contracting with some obnoxious

noxious person, of savage disposition, for the maintenance of the poor: Not with any intention of the poor being better provided for, but to hang over them *in terrorem*, if they will not be satisfied with the pittance which the overseers think fit to allow them. And one such task-master oftentimes undertakes for the poor of several parishes or townships. But the justices have power, by withholding their assent, to prevent any bad use being made of this kind of traffic; and such power cannot be exercised with too much vigilance.

Oath of a poor person wanting maintenance.

A. P. of — in the parish of — in the county of — maketh oath, that he is very poor and impotent, and not able to provide for himself and his family, and that on — last he did apply for relief to the parishioners of the said parish at a vestry (or other public) meeting [or, to two of the overseers of the poor of the said parish] and was by them refused to be relieved.

A. P.

Taken and made before me one of his
majesty's justices of the peace for the
said county, the — day of
— J. P.

Warrant thereupon to summon the overseers.

Westmorland. { To the constables of — in the parish of
— in the said county, and to every of
them.

WHEREAS A. P. of your parish, hath this day made oath before me — one of his majesty's justices of the peace in and for the said county, that he the said A. P. is very poor and impotent, and not able to provide for himself and his family; and that he the said A. P. did on — last apply to the parishioners of your said parish at a vestry (or other public) meeting [or, to A. B and C. D. two of the overseers of the poor of the said parish] and was by them refused to be relieved: These are therefore to require you in his said majesty's name to summon two of the overseers of the poor of the said parish to appear before me on — next, at the house of — in — in the said county, at the hour of — in the forenoon of the same day, to shew cause why relief should not be given to the said A. P. And be you then there with this precept, to certify what you shall have done in the execution hereof. Given under my hand and seal the — day of — in the — year —

Order

Order for maintenance.

Westmorland. **W**HEREAS A. P. of ——— in the parish of ——— in the said county of ——— hath made oath before me ——— one of his majesty's justices of the peace for the said county, that he the said A. P. is very poor and impotent, and not able to work; and that he the said A. P. did on ——— last apply for relief to the parishioners of the said parish of ——— at a vestry (or, public) meeting, [or, to A. B. and C. D. two of the overseers of the poor of the said parish,] and was by them refused to be relieved: And whereas A. B. and C. D. overseers of the poor of the said parish, have been duly summoned by me, to shew cause why relief should not be given to the said A. P. and have appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid, [or, but have made default to appear before me according to such summons:] I do therefore hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay unto the said A. P. the sum of ——— weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise ordered according to law to forbear the said allowance. Given under my hand and seal at ——— in the said county, the ——— day of ——— in the ——— year ———.

Contract for maintenance.

AT a public meeting of the inhabitants of the parish of ——— in the county of ——— for that purpose assembled upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the said parish, of the one part, and A. M. of ———, in the said parish, yeoman, of the other part: That he the said A. M. shall and will, during the space of one whole year, to commence from ——— next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people, as shall be lawfully entitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance: And that in consideration thereof, the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said A. M. the sum of ——— in equal proportions. ——— The said A. M. to have moreover and take unto himself the benefit of the said poor people's

people's work, labour, and service, during the said term. In witness whereof the parties to these presents have hereunto set their hands, the ——— day of ———.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *clothing*; setting forth in what condition they shall go, and in what condition be delivered back again. As also, if they shall *die*, who shall be at the expence of burying them, and the like. As also, if they shall be *refractory* or ungovernable; who shall be at the charge of sending them to the house of correction, or otherwise reducing them to good behaviour. And other clauses as there may be occasion.

If two parishes or townships shall join in such contracting, it will be necessary to insert in the contract the consent of the justice of the peace; as thus: ——— *by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of J. P. esq. one of his majesty's justices of the peace for the said county, dwelling in the said parish of ——— [or, near to the said parishes or townships of ———.]*

And the assent of the said justices may be indorsed thereon as follows:

I, ——— *esq. one of his majesty's justices of the peace for the within-mentioned county of ———, and dwelling in the within-mentioned parish of ———, (or near to the within-mentioned parishes or townships of ———,) do consent unto, allow, and approve of the within-written contract. Given under my hand and seal, the ——— day of ———.*

5. *Some account of the acts of 22 G. 3. c. 83. 33 G. 3. c. 35. 44 G. 3. c. 110. and 36 G. 3. c. 10. for the maintenance of the poor by incorporated societies.*

Generally, nothing in this act shall extend to any parish, township, or place, which shall not agree to adopt the provisions herein contained. Restrictions of the said act.

In order to which agreement, whenever two parts in three in number and value of the owners or occupiers, according to their poor rate, within any parish, township, or place, shall at a public meeting signify their approbation of the provisions herein contained, and shall at such meeting nominate to the justices three persons qualified for guardians, and three others for governors of the poor house, and fix salaries to be paid to such guardian and governor respectively, and shall procure the consent of two justices within that division to such agreement and salaries; they shall from that time be entitled to the benefits of this act. *s. 3.*

And by the 33 G. 3. c. 35. Whenever two third parts in number and value as required by the said act of such qualified

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lified persons only as have actually attended or actually attend at such public meeting held in the directions of the said act, have there signified hereafter there signify, their approbation of the the said act contained, and their desire to adopt approbation and desire so signified, or to be her signified as aforesaid, have been and shall be a compliance with the said act. *f. 1.*

And whenever two third parts in number persons so qualified, and actually attending at meeting, shall nominate and recommend to the of the justices of the county &c. where such be holden, three able and discreet persons qualified guardians of the poor for such parish, township, or place, and shall also at the said public meeting, by their hands, signify their opinion to the that on account of the extent and population of the said parish &c. more than one guardian of the poor is necessary, and shall express their desire, that four or more fit persons be appointed. *f. 1.*] so nominated and recommended, may guardians of the poor for such parish &c. such are already empowered by the said act to appoint a guardian for such parish &c. may appoint four or more guardians accordingly. *f. 2.*

the poor; but the guardian shall be invested with all powers given by any act of parliament to the overseers of the poor, and in all respects, except in regard to making and collecting the rates, shall be an overseer; but the churchwardens and overseers shall continue to be liable to collect the poor rate, and shall pay the same to the guardian; or if two parishes or places be united, they shall pay over their quotas respectively to the treasurer of such united district. *f. 7. 8.*

And all notices or applications directed by any act of parliament to be given or made to the overseers, shall be given and made to the guardians; but if any orders of removal or removals shall happen to be given to the churchwarden or overseer, the same shall be valid, and the churchwarden or overseer shall deliver the same to the guardian. *f. 7.*

Provided that nothing herein shall extend to alter or affect the settlement of any person; or to give to any illegitimate child born in a poor house or workhouse established under the authority of this act, a settlement in the parish or place where such house shall be (but such child shall be considered as settled in the parish or place to which the mother belongs); nor to alter the regulations established by any act of parliament for any particular house of industry in any part of his kingdom. *f. 39.*

In like manner a visitor shall be appointed, who may appoint a deputy. The said visitor or deputy to superintend every such house, to settle all doubts concerning the persons who are to be sent thither, to enforce the rules and regulations for the better accommodation and relief of the poor, and to settle accounts between guardians and treasurer. And for an inducement for undertaking the office, the visitor or deputy shall be freed from the office of constable, and all parochial offices, and from serving upon juries, whilst he continues in such office. *f. 10, 11.*

(And the guardians shall recommend to the justices a treasurer, who shall appoint him accordingly; which treasurer shall account before the guardians at every meeting, and shall once a year make out an account of the expences attending the poor house, and of the number of poor persons, distinguishing their age and sex, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding, to be laid before the visitor, and if by him approved, shall be transmitted to the clerk of the peace, and by him laid before the sessions; and such treasurer shall be allowed an annual salary not exceeding 10 l. as the visitor shall appoint.) *f. 12.*

The justices shall also appoint a governor of each poor house; who may, upon proof of misbehaviour or incapacity, be removed by the visitor or guardians. *f. 9.*

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the offices of guardian, governor, visitor, and treasurer, determine in *Easter* week yearly, on the day on which public meeting for the purposes of this act shall be

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the intermediate time, if any vacancy shall happen in of the said offices, by death, resignation, or removal; ings shall be called as soon as conveniently may be, and vacancies filled up in the manner before mentioned.

the guardians shall provide houses, with proper buildings accommodations, either by erecting new ones on land to urchased or rented by them, altering old ones, or hiring ings for the purpose; and fit them up with the advice e visitor, at the proportionable expence of the several s respectively. §. 17.

rovided, that the poor house shall be situate within the ctive parish or township, or if several be united, then in one of the parishes or townships so united; and not here, without the consent of three parts in four in num- and value as aforesaid. §. 18.

nd the guardians, with the approbation of the persons ified as aforesaid, may sell any house erected or pur- ed for the poor of such place, and also by order of a ce may remove the person or persons who shall inhabit ame, or any other house provided at the expence of such

each, for the greater ease in discharging the same, And the guardians and their successors shall keep down the interest; and when the principal shall be called for, they may borrow it from some other person by assignment of the security. *f. 20.*

And by 43 G. 3. c. 110. Whereas by the 22 G. 3. c. 83. it was among other things enacted, that in case any money should be borrowed under the powers of the said act, for the building any poor house or workhouse, or purchasing any land necessary to be used for that purpose, the assessments for the relief of the poor should continue at the same rate they were when such poor house or workhouse was first established, until the debts so contracted, and the interest thereof, should be fully discharged: And whereas by the 42 G. 3. c. 74. it was enacted, that the guardians of the poor of any parish who had erected any poor house or workhouse, under the powers of the said therein recited act, should with the consent of the several persons to whom the same should be due and payable, yearly pay off any part of the money borrowed under the powers of the said recited act of 22 G. 3. not being less than one 20th part thereof, besides the interest which might be payable on the sum remaining undischarged; and in case such sum to be paid off should not in any one year be sufficient to discharge any one of the notes for 50l. issued pursuant to the directions of the said recited act, for securing the money borrowed under the authority thereof, the same should from time to time remain in the hands of the overseers of the poor of such parish until it amounted to a sufficient sum to pay off and discharge any of the said notes: And whereas doubts are entertained whether the said recited act of the 42 G. 3. has effectually relieved such parishes as have adopted the provision in the said act of 22 G. 3. from the burthen some effects thereof; it is therefore enacted, that so much of the said recited act of 22 G. 3. as requires that the assessments for the relief of the poor shall continue at the same rate as they were when any poor house or workhouse was first established under the authority of the said recited act, until the debt contracted, and the interest thereof, should be fully discharged, shall be repealed. *f. 15.*

42 Geo. 3. c. 74.

Part of 22 G. 3. c. 83. requiring the assessments to continue, &c. repealed.

Assessments may be diminished. The guardians shall pay off a 20th part of the borrowed money under 22 G. 3. c. 38.

And such assessments shall from time to time be diminished to such amount as shall be deemed proper and necessary: Provided always, that the guardians of the poor, for the time being of every such parish, shall yearly pay off or provide for a 20th part at least of any monies which shall have been borrowed for the purpose aforesaid under the powers of the said act of 22 G. 3. and also shall duly keep down the interest of all monies which shall be so borrowed.

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Every person sent to the poor house shall deliver to the governor an order for his admission signed by one of the guardians. /s. 28.

But no person shall be sent to such poor house, except such as are become indigent by old age, sickness, or infirmity, and are unable to acquire a maintenance by their labour, except such orphan children as shall be sent thither by order of the guardian with the approbation of the visitor, and except such children as shall necessarily go with their mothers thither for sustenance. /s. 29.

All infant children of tender years, and who from accident or misfortune shall become chargeable to the parish or place where they belong, may be either sent to such poor house, or be placed by the guardian with the approbation of the visitor, with some reputable person at such weekly allowance as shall be agreed upon, until such child shall be of age to go to service or bound apprentice; and the visitor shall see that they be so placed out, at the expence of the place to which they shall belong, according to the laws now in being: Provided, that if the parents or relations of such poor child sent to such house, or any other responsible person, shall desire to receive and provide for such poor child, the guardian may dismiss him from the poor house, and deliver him to such person: Provided also, that nothing herein shall give any power to separate any child under the age of seven years

From the time that any parish, township, or place shall have adopted the provisions of this act, so much of the act 9 G. 2. 7. as respects the maintaining or hiring out the labour of the poor by contract shall be repealed. *f. 1.*

Farming out the poor to cease.

Provided that the visitors and guardians may make agreements with any person for the diet or cloathing of such poor persons who shall be sent to the houses provided by this act, and for their work and labour; so that such agreement be made for not longer than 12 months, and so as the same be under the controul of the visitor, guardian, and governor; with power to two justices to dissolve the contract. *f. 2.*

On complaint upon oath to a justice, on behalf of any poor person belonging to any parish or place, that the guardian hath refused to such poor person proper relief, the justice (on inquiry into the circumstances upon oath) may order some weekly or other relief, or direct such guardian to send him to the poor house, if he shall appear to be a fit object, to be kept and provided for there; which order shall be complied with by the guardian within two days after he shall receive the same, on pain of 5*l.* of which sum so much shall be paid to such poor person as the justice shall direct, the remainder to be applied as the other penalties by this act. *f. 37.*

Occasional relief ordered by the justices.

Or if it shall appear that such person is able and willing to work, but wants employment, the justice may order the guardian to procure him maintenance and employment in the manner herein-before directed: Or if such person shall appear to be an idle or disorderly person, and has not used proper means to get employment; or that he is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses or places of bad repute, doth not maintain his wife or children; the justice may commit him to the house of correction for any time not exceeding three months, nor less than one. *f. 35.*

Provided, that in places where a visitor is appointed, application shall be first made to the guardian; and if he refuses to direct, then application shall be made to the visitor; and if he refuses, then application shall be made to a justice. *f. 36.*

The poor persons sent to every such house shall be maintained at the general expence of the parishes or places so uniting. *f. 24.*

Maintenance.

And the treasurer, with the assistance of the governor, shall provide all necessaries for maintenance of such poor, and keep an account thereof. *Id.*

The guardian of the poor for any parish or place shall provide, at the expence of such parish or place, suitable cloathing for the persons sent by him to such poor house; which if he shall neglect to do, the governor or one of the guardians

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guardians of such house shall complain to a justice, who shall summon the person complained against him to provide such cloathing; and if he make default in providing the same within ten dayes next after such summons, the justice shall order the governor of the house to provide the same, and levy the price thereof together with costs and charges, by distress and sale of the goods of such guardian so making default. *f. 3.*

Every person receiving weekly relief shall be examined by the 8 & 9 *W.* unless directed otherwise by the justice on proof of very decent and orderly behaviour.

And there shall be a meeting of the guardians of the house, on the first *Monday* in every month, to examine the accounts of the preceding month.

At which meeting the treasurer shall produce the accounts, and the money due to him shall be settled and paid in proportion to the sums paid by the respective parishes at a medium of three years, next before the meeting in writing. And the overseers, on pain of forfeiture, shall attend and give an account what has been the expense of the house at a medium for three years. *f. 24, 25.*

And if the guardian shall not attend the monthly meeting, he shall send some person to attend and make payment; and if by some accident he cannot attend himself, he shall send some person in his stead, whose fee shall not exceed 5*l.* nor less than 40*s.* *f. 26.*

the place of his settlement, and make an order for his removal thither if they think fit. And the parish officer who shall so provide for such poor person shall make a charge of the expences; which, on being allowed by the justices, shall be paid by the guardian of the parish or place where such poor person shall be settled, if that can be discovered, and be within the county: Or, if such person shall die before he can be so examined, or shall be found dead in any parish or place to which he did not belong, the guardian of that place shall cause him to be buried in the parish or place where he so died, or was found dead, and make a charge of the expences thereof; which, being allowed by a justice, shall be paid by the guardian of the place where such person shall appear to have been settled, if it be within the county; but if the settlement cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer out of the county rate. *f.* 38.

Whereas it frequently happens, that poor children, pregnant women, or persons afflicted with sickness or some bodily infirmity, are inticed or conveyed by parish officers, or other persons, from one parish or place to another, without any legal order of removal, in order to ease the one parish or place, and to burden the other with such poor persons; if any guardian or other person shall so entice, convey, or remove, or cause or procure to be so inticed, conveyed, or removed, any such poor person from one parish or place to another, which shall adopt the provisions of this act, without an order of removal from two justices, he shall forfeit not exceeding 20*l.* nor less than 5*l.* *f.* 41.

Inticing poor persons to remove without a warrant.

All penalties inflicted by this act shall be recovered before one justice of the jurisdiction where the offender dwells, by distress: for want of sufficient distress, the offender to be committed to the house of correction not exceeding six months, nor less than one. Which said penalties, not herein otherwise directed, shall be paid to the treasurer towards defraying the expences of the house. *f.* 45.

Penalties.

Persons aggrieved may appeal to the next sessions, giving eight days notice, and giving security by recognizance to pay the costs if the matter shall be determined against the appellant. *f.* 46.

Appeal.

Finally, There are rules, orders, and regulations specified in the act to be observed at every such poor house, with such additions as shall be made by the justices at a special sessions; provided, that such additions be not contradictory to these same rules and orders, and that the same be not repealed at the quarter sessions: And the governors shall cause the same rules to be printed in plain legible characters, and fixed up in some conspicuous part of such house. *f.* 34.

Special rules and forms.

There are also in the act special precedents of forms of pro-

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ing in some of the most material instances; which forms being somewhat long, and not capable of being bridged, it is thought proper for these and other particulars to refer to the act itself.

by 36 G.3. c.10. after reciting, that of late several acts have been made for the better relief of the poor in parishes and incorporated districts; and certain persons are therein appointed to assess the poor's rates in such places, but the sum to be raised is frequently limited not to exceed a certain sum in one year; and that by reason of the late increase of the price of corn and other necessary articles of life, the amount of the assessments so limited are insufficient, to defray the expences of maintaining the poor since 1st Jan. 1795, and that the whole amount of the rates which could be raised in the present year, whereby debts have been incurred, it is become necessary that the sums to be assessed should be enlarged; it is enacted, that it shall be lawful for the Justices and acting guardians within any such district, or any other person by whatsoever name called, to whom power is given of appointing the sums to be assessed, at any annual, or other general meeting, whenever the average price of wheat at the corn market in *Mark lane*, for the week immediately preceding such meeting, shall have exceeded the average price of wheat at the same market for the three years from which the average amount of the

By 49 G. 3. c. 124. s. 5. reciting that whereas certain rules, orders, bye laws and regulations appointed to be observed and enforced in every poor house established under the authority of the said act: and whereas it is expedient that such rules, orders, bye laws, and regulations should be extended to poor houses and workhouses established in other parishes; it is enacted, that any two or more of his Majesty's justices of the peace, may at any petty sessions direct such rules, orders, bye laws, and regulations, or any of them, to be observed and executed in any parishes within their respective divisions or districts, as fully as in those incorporated by the said act.

petty sessions may direct the regulations prescribed by recited act to be observed.

Sect. IV. Of the overseers accounts: and herein,

- 1. Of the accounts, and the justices' power to enforce accounting, and payment of the balance.*
- 2. Of appeal against the overseers' accounts.*

- 1. Of the accounts, and justices' power to enforce accounting, and payment of the balance.*

By the 43 El. c. 2. *The churchwardens and overseers shall within four days after the end of their year, and other overseers nominated, make and yield up to two justices (1 Q.) a true and perfect account of all sums by them received; or rated and assessed and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office; and such sums of money as shall be in their hands shall pay and deliver over to their successors: And the subsequent churchwardens or overseers, by warrant from two such justices, may levy by distress and sale of the offender's goods the said sums or stock which shall be behind on any account to be made; and in defect of such distress, two such justices may commit him to the common goal, there to remain without bail or mainprize, until payment of the said sum and stock: And also any such two justices may commit to the said prison every one of the said churchwardens and overseers, which shall refuse to account, there to remain, without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands. s. 2. 4.*

Account.

And by the 17 G. 2. c. 38. it is enacted as follows: *The churchwardens and overseers shall yearly, within fourteen days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entered in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received; and also of all materials that shall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay and deliver over all sums of money*

and

other things, which shall be in their hands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the same at the taking of the account, without fee: and the said books shall be preserved by the churchwardens and overseers in some public or private place within the parish or township; and they shall permit any person assessed, or liable to be assessed, to inspect the same at reasonable times, paying 6d. for such inspection; and shall on demand give copies at the rate of 6d. for every three hundred words, and so in proportion. And if they shall refuse or neglect to make and yield up such account verified as aforesaid, in such time, or shall refuse or neglect to pay over the money and other things in their hands; any two justices may commit them to the common gaol, till they shall have given such account, and shall have paid and yielded up such money and other things in their hands as aforesaid. s. 1, 2.

And if any overseer shall remove, he shall, before his removal, deliver over to some churchwarden or other overseer his accounts verified as aforesaid, with all assessments, rates, papers, money, and other things concerning his office; and if any overseer shall die, his executors or administrators shall, within 40 days after his decease, deliver over all his accounts concerning his office to some churchwarden or other overseer, and shall pay out of the assets all money remaining in his hands which he received by virtue of his office before any

count as overseer, or at any time after the expiration of any of those years, pursuant to the statute. At the expiration of the last year, ending at *Easter* 1793, he made out one general account as overseer for the four successive years ending at *Easter* 1792, and for that part of the year in which he served the office ending at *Easter* 1793; which account was allowed by two justices, and upon that allowance there appeared a balance of 9l. 1s. 0d. due to *Goodcheap*. An appeal was lodged at the next sessions, being at *Midsummer* 1793, and was adjourned till *Michaelmas* following. During the first four years *Goodcheap* expended 232l. 0s. 9½d. for the use of the poor, namely, the first year 84l. 18s. 11½d.; the second year 48l. 19s. 1½d.; the third year 64l. 13s. 4d.; and the fourth year 33l. 9s. 4½d.; and was not reimbursed the same or any part thereof. Four rates were made previous to *Easter* 1792, three of which were quashed, and one confirmed upon appeals, but that was omitted to be collected by *Goodcheap*, on account of the rate being informal. After he was appointed an overseer in the place of *Stanley*, two rates were made and collected by him, (*viz.*) one at 8s. and the other at 5s. in the pound, out of which he reimbursed himself the money he expended for the four years ending at *Easter* 1792, and the remainder of the year ending at *Easter* 1793, by charging the same in the account appealed to. The appellant only became an occupier in *St. Michael* in *Longstanton* in *June* 1792, and paid the rate of 5s. in the pound, and was not assessed to the rate of 8s. If *Goodcheap* is entitled to reimburse himself the sums expended in the four years ending at *Easter* 1792, there is due to him 5l. 2s. 11½d.: if not, there will be a balance due from him, after allowing him the expences of the year ending at *Easter* 1793, of 219l. 0s. 4d. The sessions determined, that he could not legally insert in his account the expences of the four years ending at *Easter* 1792, but only the expences of the time when he was in office in the year ending at *Easter* 1793, and ordered the account to be amended accordingly.—*L. Kenyon Ch. J.* When the case was first brought before the court, we thought it too clear for discussion, and wished that the parish would agree to settle the account, as it would otherwise bear hard upon the defendant. For as to the question of law, it is impossible to raise a doubt about it; the overseers ought not to include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed: otherwise, as the inhabitants of a parish are a fluctuating body, the present inhabitants would be burthened with the expences of their predecessors. And as to the appellant not being permitted to object to the first rate; the objection

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tion is not to the rates but to the account in which the
are contained. Order of sessions confirmed. 6 T.R. 159.
tt. 301. pl. 332.

v. *Townsend*. H. 10 An. When the accounts are once
before any justice, either by themselves, or by the
h after these four days; no other justices can then
dle with them, and if they do, their allowance or dis-
vance is void. 1 Bott. 304. pl. 341.

uch money as shall be in their hands, shall pay and deliver
to their successors] M. 8 G. 2. R. v. the Justices of Somers-
re. *Mandamus* to the justices, to grant a warrant for
ng 30l. 17s. 11d., being the balance of the last over-
account in their hands. They return, that true it
ere was such a balance, but that the vestry had ordered
to retain it, and employ an attorney to sue for some
ity money, and get it laid out for the benefit of the poor;
one *Young* was so employed, and the balance exhausted
es, and that the overseers had engaged to pay *Young*;
for that cause they had refused to grant the warrant.—
by the court: There must go a peremptory *mandamus*;
he statute says, the balance shall be paid over to the new
seers, under a penalty; and it is not in the power of the
y to dispense with the statute. 2 Str. 992. 1 Bott. 311.
52.

26 G. 2. R. v. *Eggington*. The defendant had re-

time they could not have sued him for this debt: And even if this sum had been kept by itself, the bankrupt's assignees could not have touched it. The defendant was a mere trustee for the parish, and I cannot think that his bankruptcy discharged him from his office of overseer.—Rule discharged.

1 T. R. 369. 1 Bott. 313. pl. 335.

E. 31 G. 3. R. v. Sir J. Carter and others. On an appeal against the allowance of the accounts of Mr. Read, an overseer of Fareham, Southampton, the sessions disallowed several items in the account, amounting in the whole to 42l. 7s. 1d.; but the order of sessions did not proceed to direct Mr. Read to pay that sum over to the succeeding overseers. On Mr. Read's subsequent refusal to pay over this sum, an application was made to two of the defendants, as magistrates, desiring them to enforce payment under the 43 *El. c. 2. s. 2. 4.* and 17 *G. 2. c. 38. s. 3.*; but they conceiving they had no authority to act, declined: whereupon a rule was obtained requiring them to shew cause why a *mandamus* should not issue to compel them, or any two of them, to receive and proceed on the complaint against Mr. Read, for refusing to pay over the balance in his hands. — And on their part it was contended, that the magistrates had no jurisdiction, as this case had been before the sessions, who had made a judicial order upon the subject. The 43 *El. c. 2. s. 2. 4.* directs the overseers to pay over the balance in their hands to their successors in four days; and in default thereof enables two magistrates to levy the sum due by distress and sale of the offender's goods, or to commit him to prison. The 17 *G. 2. c. 38. s. 3.* only enlarges the time of paying the balance to 14 days; giving the justices the same power to commit the defaulters to prison, and omitting the levying the balance by distress and sale. And under both statutes an appeal to the sessions is given against the allowance of the accounts. But the power of the magistrates is confined to cases where there is no appeal. Here the prosecutor chose to appeal to the sessions: and therefore he should pursue that remedy by sessions process. And these magistrates, acting out of sessions, have no power under either of these statutes to compel the payment of the balance of this account.—*L. Kenyon Ch. J.* It seems to me that these justices have jurisdiction in this case. The effect of the appeal was the ascertaining the *quantum* of the arrears; and then the statute attaches, and enables the magistrates out of sessions to enforce the payment of the balance (a).—*Grose J.* There are as much arrears now as they were before

Two justices may enforce payment of the balance after appeal, though the sessions did not make any order for payment.

(a) *Ashburst* and *Buller Js.* absent.

the

the appeal; only the quantum is ascertained. Rule absolute. 4 T.R. 246. 1 Bott. 314. pl. 356.

Balance to be levied by distress, payment having been ordered by sessions on appeal.

M. 4 Ann. Reg. v. Hedges. On appeal upon the stat. of 43 El. against the allowance of the account by two justices, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court: They should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment, in the same manner as the two justices must do. 3 Salk. 533. 1 Bott. 304. pl. 340.

For non-payment of balance, there must be distress before commitment.

Reg. v. Turner. E. 9 An. If accounts are adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distrain upon them, and upon the return thereof there may be a commitment. 1 Bott. 310. pl. 349.

Where a balance may be ordered to be distributed.

Borough of Banbury. M. 1 Jac. 2. Where four towns lie in one parish, having each an overseer, and there being one rate for the whole four, each overseer collecting that of his respective town, and the inhabitants of each being respectively assessed by their respective overseers, the justices may order a distribution, where there is a want of money in some and a surplussage in others. 1 Bott. 309. pl. 347.

Re-payment of balance.

So in *R. v. Churchwardens of Topsham*, it was held the justices might order payment of the balance to the succeeding overseers. 1 Bott. 310. pl. 348.

One overseer reimbursing another.

And in *R. v. Limehouse, E. 1 G. 1.* That one overseer should reimburse another where the one had a surplussage, and the other was money out of pocket. *Id.* pl. 350.

Commitment until they account.

Until he have made a true account] T. 2 W. The Mayor & Churchwardens of Northampton. The mayor committed the churchwardens, as overseers of the poor, for refusing to account: and the warrant of commitment concluded, *until they be duly discharged, according to law.* The court held the commitment void: because the warrant ought to conclude, *there to remain until they shall account*, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy: for in the first case, the commitment must be until discharged according to law; but in the latter, until he comply and perform the thing required: for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty. *Carth. 152. 1 Bott. 298. pl. 322.*

Justice refusing to swear an overseer to his account.

Which account shall be verified by oath before one justice] H. 19 G. 2. *R. v. the Justices of Middlesex.* A mandamus was

was moved for, to be directed to the justices to swear *William Carr*, late overseer of the poor of the parishes of *St. Andrew* and *St. George the Martyr*, to the truth of his account, upon an affidavit made by *Carr* that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. On behalf of the justices, it was objected, that the account consisted of gross sums, and that the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account. By the court: A *mandamus* is a matter of course, and we cannot refuse to grant it. If the justices have any legal objection, they may return it upon the *mandamus*. 1 *Wilson*, 125. 1 *Bott*. 300. pl. 330.

And if any person think himself aggrieved by the account, he may have his remedy by appeal.

And the said books shall be preserved by the churchwardens and overseers] T. 24 & 25 G. 2. R. v. *Clapham*. A *mandamus* was granted to oblige the old overseer to deliver over the books of the poor rates to the new overseer; for, by the court: They are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them, and the overseer and churchwarden for the time being ought to have the custody thereof. 1 *Wilson*, 305. 1 *Bott*. 301. pl. 331.

Books to be delivered to the new overseers.

2. Of appeal against the overseers' accounts.

By the 43 *El. c. 2*. If any person shall find himself aggrieved by any act done by the said overseers or justices, he may appeal to the general quarter sessions, whose order therein shall bind all parties.

Appeal against the account.

And this power of appealing generally, doth not seem to be taken away by the statute here next following; but the same being only in the affirmative, it seemeth that they may both stand together, and that the appeal may be upon either of the statutes.

And upon this statute of the 43 *El.* the appeal is not limited to the next sessions, but may be at any time after.

The other statute above mentioned, with regard to this matter, is as follows: If any person shall have any material objection to such account or any part thereof, he may, giving reasonable notice, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next sessions after, and the court may award costs to either party, as in cases of settlement by the 8 and 9 *W.* 17 G. 2. c. 38. s. 4.

So that here is a power to award costs if the appeal is to the next sessions; but if the appeal is upon the 43 *El.* and

not to the next sessions, there is no power in such case
ward costs.

and by the said statute of the 17 G. 2. c. 38. *In all cor-
tions or franchises, which have not four justices, persons
rieved may appeal, if they think fit, to the next county
us. l. 5.*

7 G. R. v. Bartlett. An order made at the sessions
ing to accounts of overseers, was moved to be quashed,
use it did not appear that the accounts had been before
ustices out of sessions, and they cannot come *per saltum*
e sessions. On the other side it was said, that it ap-
ed there was an allowance, for the appeal is said to be
ost the disbursements *and the allowance thereof*, which
ourt will presume was regular.—But by the court: It
not follow, that this was an allowance by two justices,
he parish might do it; and therefore, for want of jurif-
on this order must be quashed. 2 Str. 983. 1 Bott. 306.
43.

Allowance of the account.

Amorland. **P**ERUSED and allowed, (having been first
signed and verified on oath by A. B. and
churchwardens, and E. F. and G. H. overseers of the
by me, one of his majesty's justices of the peace in and for
aid county, the — day of — . J. P.

V. Penalty of overseers for the neglect of their
duty.

Teer or other parish officer, as a punishment for such disobedience or neglect of duty, and if not paid, may by their warrant levy the same by distress and sale of the goods of such offender, rendering to him the overplus (if any) after deducting such fine and the charges of such distress and sale; to be applied to the poor of the parish or place where such offender shall reside, at the discretion of such justices; and for want of such distress, such offender shall be committed to the house of correction for any time not exceeding ten days. *f. 1.*

If any person shall think himself aggrieved, he may Appeal. appeal to the next sessions, upon giving ten days' notice thereof. *Id.*

And no person acting under any such warrant of distress, shall be deemed a trespasser *ab initio*, by reason of any irregularity in such warrant or proceedings thereupon. *f. 2.*

And in all actions to be brought in the courts at *Westminster*, or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted. 3 *W. c. 11. f. 12.* Witnesses.

Sect. VI. *Indemnity of churchwardens and overseers in performance of their duty.*

By the 7 *J. c. 5.* If any action shall be brought against any justice of the peace or constable (and by 21 *J. c. 7.* against any churchwarden or overseer of the poor, or other person who in their aid or by their commandment should do any thing concerning their offices), he may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for him, or the plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs. And such action shall be laid in the county where the fact was committed, and not elsewhere. *Double costs.*

By the 43 *El. c. 2.* Persons sued for any thing done on that act, may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit. *Treble damages and costs.* *f. 19.*

And by the 24 *G. 2. c. 44.* No action shall be brought against any constable, headborough, or other officer, or any person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his *No action to be brought until a copy of the warrant hath been demanded and refused.*

Door.

is abode, by the party, or by his attorney, in
signed by the party demanding the same of the pe
copy of such warrant, and the same hath been
neglected for six days after such demand; and if
liance therewith, any such action shall be broug
ut making the justice who signed such warrant
n producing and proving such warrant at the
ury shall give their verdict for the defendant, not
ng any defect of jurisdiction in the justice. An
ction be brought jointly against the justice and
table, headborough, or other officer, or person
his aid as aforesaid; then on proof of such wa
ury shall find for the defendant. And if the ve
e given against the justice, the plaintiff shall r
osts against him, to be taxed in such manner by
fficer, as to include such costs as the plaintiff is
ay to such defendant for whom such verdict shal
s aforesaid.

E. 13 G. 3. Jackson's case. An action of tr
brought by the plaintiff against the overseers of th
aking his gelding. They alleged, that by virt
office, and in pursuance of a justice's order, t
atisfaction for a poor rate, which was the tre
plained of. It was objected on the trial, that by
of 24 G. 2. c. 44. demand should have been ma
berufal and copy of the justices warrant, and six

extend the benefit of the statute of 21 J. was the intent of the statute of 24 G. 2. and all officers acting under a justice's warrant are included in it. *Lofft.* 249. *Bull. N. P.* 24. 1 *Bott.* 325. *pl.* 387.

Also in the case of *Harper v. Carr*, *E.* 37 G. 3. it was determined, that a churchwarden making distress for a poor rate under a warrant of two justices, is entitled to the protection of 24 G. 2. c. 44. (*above*) And that granting such warrant is a judicial and not a ministerial act; and that the party ought first to be summoned to hear what he hath to say in his defence, before a warrant of distress be issued. 1 *T. R.* 270. 1 *Bott.* 326. *pl.* 389.

Of the Settlement of the Poor.

Concerning the binding and ordering of parish and other apprentices, see title *Apprentices*.

Concerning the filiation and maintenance of bastard children, see title *Bastards*.

Concerning the ordering of servants and other workmen and labourers, see title *Servants*.

For these do fall in with this title, no further than as they happen to become poor; upon which account their settlements are here treated of; but nothing otherwise in particular concerning them.

It is to be noticed in this place, that the stat. of 22 G. 3. c. 83. establishes many new regulations with regard to the maintenance of the poor, but as that statute leaves it optional in any parish or other place, whether they will adopt these regulations or continue in the present mode, it is judged requisite for the present to preserve this title unaltered; in Sect. III. (5.) (*ante*), is inserted, together with other statutes relating to it, an account of the said stat. of 22 G. 3., which being, as it were, in its probationary state, remains as the subject of future consideration.

It may be proper here to take notice of the 16 G. 2. c. 18. which enacts, That justices may do all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance and settlement of the poor; or to any laws concerning parochial taxes, levies or rates, notwithstanding they are rated or chargeable with the rates within any place affected by such their acts. Provided, that this shall not empower any justice for any county at large to act in the determination of any appeal to the sessions of such county, from any order, matter or thing relating to any such parish, township or place, where such justice is so charged or chargeable.

Poor.

By a statute made in the 12 R. 2. (c. 7.) They were to repair, in order to be maintained, to the place where they were born.—By the 11 H. 7. c. 2. They were to the place where they last dwelled, or where they were born. By the 19 H. 7. c. 12. to where they or made last their abode by the space of three years. 1 Ed. 6. c. 3. this was explained to be, where they most conversant by the space of three years. c. 7. they were to be sent to the place of their birth; if not, to the place where they had any; if not, to the place where they had been the space of one year; if that could not be known, to the place of their birth.—So that there were no change of settlement all along; by birth and by inhabitation for any indeterminate time, next for three years, next for one year. And this last continued to the time of the 13 and 14 C. 2. c. 12. By this statute “Whereas the number of poor within England is very great and burthensome; and whereas, by defects in the law, poor people are not restrained from one parish to another, it is enacted, that within any such persons shall come to settle in any tenement or house, within any year, two justices may remove them to the place where they last legally settled for the space of forty days at least, if they be native, householder, sojourner, apprentice or servant. There is one class of persons whose case, a

G. 3. R. v. Eastbourne. The person removed was the
a foreigner, and she was removed to *Eastbourne*, (the
of her maiden settlement,) from the parish of *Seaford*
he had for two years before, and at the time of the
al, resided, and rented a house of above the value of
exercising therein the trade of a baker; he thought he
exercise his trade better at *Eastbourne*, and thereupon
se and children became chargeable. The husband ac-
ed in the removal, and accompanied them to *Eastbourne*.
: sessions confirmed the order of removal, and then
er before the court of king's bench was, whether a
er can gain a settlement in this country. In the argu-
in support of the order the above case of *St. Giles's*
Margaret's was cited, and it was urged that the 13 and
1. referred only to the poor of *this kingdom*, i. e., *Eng-*
land Wales.

Lord Ellenborough C. J. This man was not an alien
, but a German by birth, an alien *amoy*. And as
though he may not take a lease of a dwelling house
p, by reason of the statute 32 H. 8. c. 16. yet he may
y a tenement of 10l. a year, and carry on his trade
like any other person. Then if he may do so, he has
interest which enables him to gain a settlement by the
on of the legislature: the law of humanity obliges us
nd relief to them to save them from starving. **Law-**
J. In answer to the observation, that the statute of
did not extend to any but the poor of *England and Wales*,
hat, without dispute, *Scotchmen* and *Irishmen* may gain
ents here. Both orders quashed. 4 E. R. 103.

There are also two descriptions of persons who are in-
e of gaining any settlement by any acts of their own.
irst is that of married women, who during their mar-
state cannot by any act of their own acquire any set-
nt. What is their proper settlement will be considered
ther place. The next description consists of infants
the age of 7 years.

Married wo-
men;

and infants
under seven.

R. v. Hasfeld, E. 13. G. 2. It was decided that an
under 7 could not be removed from the parish if
his property lay; and in the case of *R. v. Houghton le*
H. 41 G. 3. This case was adverted to, and from the
ations which fell from the judges upon that occasion,
ld seem that they considered the infant's *possession* and
occupation to be the circumstance which rendered him
weable; for that *his occupation* must have been merely
ary. 2 Bott. 516. pl. 571. See also *post*, Sect. VIII.
R. v. Cumner, 2 Bott. 18. pl. 39.

R. v. St. Mary Cardigan, (which see *post*. tit. *Settlement*
Intake.) **Lord Kenyon C. J.** seemed to be of opinion

Persons attaind.

Door. (Settlement.)

that persons attaint could not, while attaint, acquire any settlement.

Deferters.

A deserter can, while he is such, do no act to gain a settlement. *R. v. Norton juxta Kempsey. 9 E. R. 206.*

Soldiers.

And it may be doubted whether soldiers can (while quartered in any place) by any act of their own, acquire a settlement there. In *R. v. Hellingly, 10 E. R. 41.* This question was one of the two then made by the counsel who argued that case, but it became unnecessary to consider it, and no opinion was given upon it.

It remains to be considered by what methods a settlement may be gained, which will be done in the following order; viz.

Sect. VII. Settlement by BIRTH, and herein

1. *Of bastards.*
2. *How far bastards are affected by certificates.*
3. *Whether removeable from the mother.*
4. *Of legitimate children.*

Sect. VIII. Settlement by PARENTAGE, and herein of emancipation.

IX. ————— MARRIAGE, and herein of the evidence in this and the two preceding sections.

- X. ————— *Hiring and service.*
- XI. ————— *Apprenticeship.*
- XII. ————— *Renting a tenement.*
- XIII. ————— *Estate.*
- XIV. ————— *Office.*
- XV. ————— *Payment of rates.*
- XVI. ————— *Certificate.*
- XVII. ————— *Relief.*
- XVIII. ————— *Removal unappealed against.*

It will be observed that sections 7, 8 and 9, are cases of settlements which may rather be said to be communicated to than gained by the parties. The six succeeding sections are cases in which settlements are gained by the parties by their own immediate act. And in the three last, settlements are communicated by the act or default of third parties.

Sect. VII. Of settlement by birth :

1. *Of bastards.*
2. *How far bastards are affected by certificates.*

3. *Whether*

3. *Whether removeable from the mother.*

4. *Of legitimate children.*

It is sometimes difficult to prove the place of the birth of a pauper. The two topics commonly made use of for this purpose are in their own nature inconclusive. The first question that is commonly asked a pauper is, "Where were you born?" Unto which it is impossible for him to give a determinate answer, and his testimony is more or less credible according to the means he has had of information. The parish register is a proof not of the birth but of the christening; which are not always in the same place: besides that the register is no evidence at all of the *identity* of the person. In the case of *Cresch St. Michael v. Pitminster*, E. 14 G. 3. the mother of the pauper was subpoenaed, but did not attend; and no account was given of her being under any legal disability of attending. For which reason the sessions quashed the order of the two justices, as not being supported by the best evidence that the nature of the case would admit of. On the other hand, a copy of a register, taken from the parish register of *Pitminster*, was produced. "Christenings 1735, "John son of John Every and Mary his wife, baptized December 5." And John Carter, one of the witnesses, swore, that the pauper lived many years ago with him the said John Carter; that John Every, who lived in *Pitminster*, and died long since, was considered as the pauper's father; and that he knew Mary Every who lives in *Pitminster*, and whom he understood to be the pauper's mother, and has heard the pauper call her mother. On its being moved for a rule to shew cause why the order of sessions should not be quashed, L. Mansfield seemed to think, and so it was afterwards determined on shewing cause, that this evidence was sufficient. B. S. C. 765. 2 Bott. 13. pl. 32.

1. *Of bastards.*

[Note; It is not in this place questioned, who shall or shall not be deemed a bastard, but the settlement only is considered of such as are first supposed to be bastards; other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under the title *Bastards*.]

A bastard child is prima facie settled where born; And this was the ancient genuine settlement; and a person could have no other, until he had resided for a certain time, as is aforesaid. See *Whitechapel v. Stepany*, E. W. Cartbrew, 433. 2 Bott. 12. pl. 28. *Conner v. Milton*, and *Cripplegate v. St. Saviour's* (post). For a bastard gains a settlement in its place of birth

How far bastard are to be settled where born.

Door. (*Settlement.*) [Sect. VII. (1.)]

ex necessitate, for being *nullius filius*, it cannot otherwise be provided for, except a reputed father can be found.

But this rule admits of divers exceptions; which are,

1) If a woman come into a place by privity and collusion of the officers where she belongs, and be there delivered a bastard; such bastard gains no settlement, notwithstanding his birth. *Cases of S. 66.*

And in the case of *Masters v. Child*, H. 10 W. It was held, that if a woman big with child of a bastard, and settled in one parish, be persuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was settled, though the child were not born there. But if a woman with child of a bastard, come actually into one parish, and be persuaded by some of the parishioners to go into another parish, which she doth, and be delivered, this shall not charge that parish which she was settled in. *3 Salk. 66. 2 Bott. 2. pl. 5. and Tewksbury v. Manning, id. 1. pl. 2.* So the bastards of lodgers are settled where born. *R. v. Spitalfields, E. 12 W. L. Raym. 567. 11. 2. pl. 6.*

2) Also, if a bastard be born under an order of removal, before the mother can be sent to her place of settlement, or hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. *M. v. Ickleford v. Great Milton. 1 Sess. C. 33. Cases of S. 66. 11. 3. pl. 9.*

Before the next sessions she was delivered at *Peram* of a bastard child. At the sessions *Peram* appealed, and the justices adjudged the woman to be last settled at *Much-Haltbam*, and ordered her to be sent back thither. After which an order was made, to settle the child at *Peram*, which it was moved to quash, because, though, regularly, bastards must be maintained where born, yet in this case, where there seems to be a contrivance, it shall not be so. Where an order is reversed, all things happening subsequent hereunto shall be avoided thereby. This child therefore being born pending the order, shall be esteemed in law to be born in that parish whereunto the mother, on the appeal, is returned back. The court seemed to agree to this, and a rule was made to shew cause, but none was shewed. 2 *Salk.* 474.

And further, In the case of *Westbury v. Coston*, *H. 2 An.* A woman big with child was removed by order of the justices from *Westbury* to *Coston*; and, pending the order, before the next quarter sessions, she was delivered of a bastard child. *Coston* appealed, and thereupon the order of the two justices was reversed; but the child was sent back to *Coston* as the place of his birth. But by the court: The birth at *Coston* did not settle the child there, because it was under an illegal order procured by *Westbury*, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And *Holt Ch. J.* said, Though here be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio*: Fraud, or not fraud, is not material in this case; but the settlement of the child depends upon the removal; for if that was wrong, they shall not ease themselves by it. 1 *Salk.* 121. 2 *Salk.* 532. 2 *Bott.* 3. *pl.* 7. and *Boreham v. Waltham*, 2 *Bott.* 2. *pl.* 4.

If a woman pregnant be removed by an order and she be delivered, and there be an appeal and the order be reversed, the child must be sent back.

(6) So also, By the statute of the 17 G. 2. c. 5. Where any woman, wandering and begging, shall be delivered of a child, in any parish or place to which she doth not belong, and thereby becometh chargeable to the same; the churchwardens or overseers may detain her, till they can safely convey her to a justice of the peace. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither by a vagrant pass; but the settlement of such woman shall be deemed the settlement of such child. *s.* 25. (a).

Bastard born in a state of vagrancy.

(a) The method of proceeding by such justice, and the form of the record, by him proper to be made, see 5 V. title *Vagrants*. Head, *Children born in vagrancy*.

(7.) A child

Poor. (Settlement.) [See

(7) A child born in the house of correction in the place of its mother's settlement. *Suckley v. Bull.* 358. 2 *Bott.* 2. pl. 3.

And in the case of *Elving* and the county gaol *ire, H. 2 G.* A bastard was born in the county, that the settlement was with the mother. 94.

(8) All bastard children born in the house of any hundred, or other district, incorporated by parliament for the relief and employment of the poor, shall be deemed to belong to the parish or place in which the mother of such bastard child was legally settled. 36.

(9) By the act for the encouragement and relief of the poor, every child which shall be born a bastard in any parish or place, the mother whereof shall at the birth of such child be a member of any such society residing in such parish or place under the authority of the act; such child shall have the same settlement as the mother had at the birth of such child: any law or custom to the contrary notwithstanding. 3. 25. (a)

(10) A bastard born in a lying-in hospital shall have the settlement of the mother. 13 G. 3. c. 82. [But as it is not known what the mother's settlement is, and

be sent back with the parent. 1 *Str.* 186. 2 *Bott.* 577. pl. 633.

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the court held, that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate): Therefore in the case of *Hilton v. Lidlinch*, T. 15 G. 2. the matter came under debate again; which was thus: A single woman went into the parish of *Lidlinch*, with a certificate from *Hilton*; lived there a year, and then had a bastard child. The sole question was, Whether the child should be settled in the parish where born, or in the parish giving the certificate? By the court; The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish, before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands entirely on the 8 & 9 W. which, for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her family, and in another place, with his or her children, to the place from whence the certificate was brought. The question then is, Whether the bastard is included under the words *family* or *children*? And we take it he is not; for the law takes no notice of bastard children, they are *fili nullius*, *fili populi*, and are *prima facie* settled where born. *Nelf. Bast.* 2 *Seff. C.* 170. 2 *Str.* 1168. B. S. C. 187. 2 *Bott.* 5. pl. 14.

T. 19 & 20 G. 2. *Wyke v. Hipperholm cum Brigbouse*. Two justices made an order for the removal of *John Catton*, otherwise *Speight*, being a bastard, from *Wyke* to *Hipperholm*, the place of his birth. Upon appeal, the sessions quashed that order. The case was: *Sarah Catton*, mother of the pauper, came on the 25th of *March* by certificate from *Shelfe* to *Hipperholm*, being then pregnant with a bastard child, namely, the said *John Catton*, otherwise *Speight*, the pauper; and was afterwards, in *April* following, delivered of him at *Hipper-*

A bastard does not come within the meaning of the word *family* in the certificate acts, and therefore if a certificated woman be delivered of a bastard child, it is settled where born, and not in the certifying parish.

But if the certificate undertakes to provide for the woman and her child, she being then pregnant of a bastard, the child is settled in the certificated parish.

holm.

holm. The sessions being of opinion that the said *John Catton* the pauper, by reason of the said certificate, did not gain a settlement in *Hipperholm* where he was born a bastard as aforesaid, discharged the original order. The certificate itself was returned by the *certiorari*, which undertook that *Shelfe* should provide for her and her child, whenever they should become chargeable. It was moved to quash this order of sessions, upon this objection, that the justices at the sessions had mistaken the law; in support whereof was cited the case of *Hilton v. Lidlinch*. On a rule to shew cause, the counsel on the other side insisted, that *Shelfe* was the last legal place of settlement of the pauper. And they argued that this case is clearly distinguishable from that of *Hilton v. Lidlinch*. For here the woman is stated to be then pregnant with a bastard child, and the certificate expressly undertakes to provide for her and her child; so that *Shelfe* plainly had this very child in contemplation, no other child being named or hinted at. Unto which it was answered, That by the express resolution in the case of *Lidlinch*, a bastard of a certificate woman is settled where born; and fraud shall never be presumed where it is not stated. The question therefore is, Whether the unborn bastard is to be considered as certificated? 'Tis true, a certificate is conclusive against the parish who gives it: But that is only in such points as are included in the certificate. This certificate, undertaking to provide for her and her child, must mean a child in being. If she had no other child, they should have stated the matter specially. — L. Ch. J. *Lee* and Mr. J. *Wright* agreed, that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. J. *Foster* observed, (to which observation the other two justices agreed,) that it did not at all appear, that the parish who gave the certificate *knew* that the woman was then with child: And he added, that there were many instances where women were near their time, without being known to be so. The counsel for *Hipperholm* proposed, that it should go back to the sessions to be more fully stated: But their opponent said, and the court agreed, that could not be done without consent; and the counsel for *Wyke* refusing to consent, the court were of opinion that the rule must be made absolute. The order of sessions therefore was quashed, and the original order affirmed, adjudging the settlement to be at *Hipperholm* where the pauper was born. *B. S. C.* 264. 2 *Bott.* 6. *pl.* 16.

M. 10 *G.* 3. *Ipsley v. Studley*. *Anne Causer* came into the parish of *Ipsley*, with a certificate from *Studley* in the words following; "To the churchwardens and overseers of the poor of the parish of *Ipsley*; We the churchwardens and overseers of the poor of the parish of *Studley* do hereby certify,

bastard born
under a certifi-
cate, including
the child with
which a woman,
whom they state

“ own and acknowledge *Anne Causer*, spinster, and the child
 “ or children that she now goeth with, to be our inhabitants
 “ legally settled with us in our said parish of *Studley*: And
 “ if at any time hereafter the said *Anne Causer*, or her child
 “ or children which she now goeth with, shall become charge-
 “ able to and ask relief of your said parish of *Ipsley*, we the
 “ said churchwardens and overseers of the poor of our said
 “ parish of *Studley* do hereby promise for ourselves and suc-
 “ cessors, that we will, when requested by any of you, re-
 “ ceive, relieve and provide for them, as our inhabitants, ac-
 “ cording as the law in that case requires.” The child was
 born at *Ipsley*, within about a month after she came to reside
 there under the certificate. It was argued, that the certi-
 ficate in this case should not operate as to the unborn child,
 but that the child was notwithstanding settled in the place
 where it was born: That this is not a certificate within the
 act of 8 & 9 W. c. 30. The undertaking relates to a non-
 entity, an embryo. An unborn child cannot be personally
 certificated. It is no part of the parent’s family. And the
 act obliges only the certifying parish to provide for the pauper
 mentioned in the certificate, together with *his or her family*;
 and a bastard, in the sense of the act, is part of no person’s
 family.—But the court were clearly of opinion, that the
 parish of *Studley* was bound by this certificate, which takes
 notice of the woman’s being then unmarried and with child;
 and acknowledges the child she then went with to be legally
 settled with them in their parish. And *L. Mansfield* ob-
 served, that the woman was very big with child; and was
 understood by both parishes to be so: And *Studley* expressly
 promised to provide for the infant she then went with.
 Therefore they ought to be bound by their certificate. An
 infant *in ventre sa mere* may be, to a variety of purposes, con-
 sidered as born, *B. S. C. 650. 2 Bott. 6. pl. 17.*

to be unmarried,
 is pregnant, is
 settled in the
 mother’s parish.

T. 37 G. 3. R. v. Mathon. R. Cagear and his wife and
 four children were removed from *Cradley* to *Mathon*. The
 sessions confirmed the order, and stated the following case:
 —*Margaret Cagear*, single woman, being settled at *Ma-*
thon, and being then pregnant of an illegitimate child that
 was afterwards born a bastard, went to *Cradley* in 1738,
 under a certificate from *Mathon* wherein the parish officers
 of *Mathon*, “ for themselves and their successors, with the
 “ consent of the parishioners, engaged to relieve and receive
 “ *Margaret Cagear* with the child of which she was then preg-
 “ nant, and all other children that she might thereafter have,
 “ until she or they should acquire a subsequent settlement,
 “ whenever she or any of them should become chargeable.”
M. Cagear resided in *Cradley* under that certificate until her
 death; and in 1746 had the present pauper *R. Cagear* an
 illegi-

But such certifi-
 cate must ex-
 pressly state the
 woman to be
 single, (it seems)
 and query, even
 then, if it will
 extend to a child
 born long after-
 wards.

illegitimate child, who continued to reside in *Cradley* until removed by the present order, without having done any act to gain a settlement for himself. — In support of the order of sessions the above case of *R. v. Ipsley* was cited, and that there was the same reason to extend the present certificate to this pauper; the certificate mentioning the mother's situation, and extending to all after-born children. — L. *Kenyon* Ch. J. It is not now necessary to question the propriety of the decision of *R. v. Ipsley*. That certainly went much beyond the former cases on this subject. However, that is distinguishable from the present case: That only extended to the child with which the woman was then pregnant; and a child in *ventre sa mere* is capable of being described. But this child was not born until eight years after the certificate was granted, and being illegitimate, he is not included in the general words in the certificate, which extends only to legitimate children. Order of sessions quashed. 7 T. R. 562. 2 Bott. 10. pl. 25. [It is observable, that it does not appear that the woman was stated to be unmarried in the certificate; though the case, as drawn up for the consideration of the court, calls her "single woman."]

3. Whether removeable from their mother.

Bastard not to be removed whilst a nurse child.

(12) Hitherto concerning the settlement of a bastard child: But notwithstanding the child's settlement, yet nevertheless if the mother and the child have different settlements, it seemeth that the bastard child, even as all other children, shall go with the mother for nurture until the age of seven years, as a necessary appendage of the mother, and inseparable from her. Thus in *Cripplegate v. St. Saviour's*, 8 Ann. (post.) it was agreed by the whole court, that the age of a nurse child, so as to go along with its mother, is until seven years of age. So also in the case of *Skeffrith v. Walsford*, M. 3 G. 2. The order was to remove a woman to her settlement; and her bastard child, of two years of age, to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to nurture so very young a child; which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And it was quashed by the court for that reason. 2 Sess. C. 90. 2 Bott. 4. pl. 11.

Except when deserted by the mother.

But although the child may not be separated from the mother, yet if she voluntarily desert it, it seemeth that the cause

cause of nurture then ceaseth, and that then it may be sent to its place of settlement.

Whilst the child continues with its mother as a nurse child, and during that time not removable to its place of settlement, yet the parish where the child's proper settlement is shall maintain such child in that other parish. As in the case of *Darlington v. Hemlington*, H. 17 G.3. *Eleanor Guy* went with a certificate from the township of *Hemlington* to the township of *Darlington*, in which last township she had two bastard children, and there became chargeable. As order being thereupon made for the removal of her to *Hemlington*, she took the two children who were born in *Darlington* with her, being both under the age of seven years. Two justices made an order upon the township of *Darlington* for the maintenance of the two children born in that township. *Darlington* appealed against the order of maintenance, and the sessions being of opinion that *Darlington* was not liable, quashed the said order: But the proceedings being removed into the court of king's bench, the court were of opinion that *Darlington* was obliged to maintain the two children at *Hemlington* whilst residing there with their mother as nurse children, and therefore quashed the order of sessions, and affirmed the order of the two justices. *Doug. 9. Cald. 6. 2 Bott. 7. pl. 19.*

To be maintained whilst a nurse child by its own parish.

4. Settlement by birth of legitimate children.

In the case of *Rickmansworth v. St. Giles's*. A child was ordered to be removed from the parish of *Rickmansworth* to the parish of *St. Giles's*, as being the place of his birth, the place of his father's last legal settlement being not known: For where the father's place of last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth, as well as an illegitimate one. *Blackerby, 246.*

The place of birth of legitimate children is prima facie the place of settlement.

H. 8 Ann. *Cripplegate v. St. Saviour's*. H. 8 An. A child of three years of age was removed from one of these parishes to the other, and it appeared in the order, that they removed him there, because he was born there, not having any other settlement. By the court: The father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *prima facie* is the settlement of the child, until there is another settlement found out. So a bastard child's settlement is its birth, because it is *filius nullius*; so if they cannot find out the settlement of a legal father, the birth is a settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and

Poor. (*Settlement.*) [Sect. VII. (4.)]

and the settlement by birth is only *quousque* they find the father's settlement; and if they never can find that, it is absolute upon them. *Foley*, 265. 2 *Bott.* 13. pl. 31.

E. 36 G. 3. *R. v. Heaton Norris.* Ann the wife of Benjamin Lomax, a soldier, and her three children, were removed from Heaton Norris in Lancashire to Beard in Derbyshire. The sessions quashed the order, and stated the following case: The respondents rested their case on the birth settlement of B. Lomax in Beard, proving that he was born there. It appeared also from the evidence given by them that his father had come to reside in Beard only two years before Benjamin was born, an entire stranger to the place and that he came from Bolton in Lancashire, where he had been many years the occupier of a public house. And it was not proved that any inquiry had been made by the respondents respecting the father's settlement. On the authority of the determinations in *R. v. Woodford (a)*, and *R. v. Bixley (b)*, it was agreed that the place of the birth of the father's husband was *prima facie* the place of his settlement. 6 T. R. 653. 2 *Bott.* 15. (n.)

So also in the cases of *Clavely v. Burton*, Staff. Aff. 5 G. 1 was holden by the judges of assize, that if the mother of a child born in one parish die in another parish, while passing a third, such child shall be settled where it was born, and not in the parish where it was left destitute by the death of the mother.

settlement of the parent. *Carth. 433. 2 Bott. 12. pl. 28.*
and see *Coxwell v. Shillingford, (post.)*

A travelling woman, having a small sucking child upon her, was apprehended for felony, and sent to the gaol, and was hanged; this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being no malefactor. *Read. Poor, Dalt. 168.*

Where the father and mother are both dead.

And where a child is first known to be, that parish must provide for it till they find another. *Comb. 364. 372.*

By the 13 G. 2. c. 29. for confirming and enlarging the powers given by charter to the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided, that no child, nurse, or servant, received or employed in such hospital, shall by virtue thereof gain any settlement in the parish where such hospital shall be situate; and consequently the settlement of *foundlings* is not different from that of all other persons: that is, if they are legitimate children, they shall follow their father's settlement, if known; if not, then their mother's settlement: if neither of these is known, or if they are bastards, they shall be settled where they were born: if that cannot be known, which is properly the case of a *foundling*, this seemeth to fall under the general rule, that every person shall be maintained and provided for in the place where he happens to be, until a settlement can be found; for in a Christian civilized country, no person ought to be suffered to perish merely for want of necessities. Only, in the present case, the act takes such children off the parish, and leaves them to the provision of the hospital.

Foundlings maintained in hospitals.

Sect. VIII. Of settlement by parentage; and herein, of emancipation.

The foregoing cases of settlement of legitimate children are founded on the fact of the father's settlement being unknown. If, however, the father's last place of settlement be known, that is the legal place of settlement of his children: and they will take successively every settlement which the father may from time to time acquire: *His last* settlement being always *their settlement*, until they have acquired one by their own act. And this rule holds good wherever the father may be, or wherever he may die.

A legitimate child born, or a child dropped in a place where a person is vagrant, gains no settlement by being dropped; but where the father was last legally settled. *Coxwell v. Shillingford. H. 4 Ann. Fost. 313. Foley, 269.*

Settlement of a legitimate child with the parents.

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t. 18. pl. 40. And this though the child be an idiot.
's case, 2 Bott. 17. pl. 37.

Formerly it was held, that a child should continue with its parents as a nurse child, until it should be eight years of age, during which time it should not be deemed capable of gaining a settlement in its own right; but by the latter decisions it seems to be agreed, that a legitimate child necessarily follow the settlement of its parents as a nurse child, or as part of the family, only until it shall be seven years of age; and that after that age it shall not be removed out of the father's family, but with an adjudication of place of its own last legal settlement, as being deemed able at that age of having gained a settlement of its own. It seemeth not difficult to determine with exact certainty, at what age a child may have acquired a settlement of its own, distinct from the parents' settlement. For by *El. c. 5. s. 12.* a child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by a subsequent act of the 17 G. 2. a vagrant's child of that age may by the justices be put out an apprentice: And as soon as the child shall have resided and lodged in a parish for 40 days after the indenture, he will have thereby gained a settlement. So that the precise time, when a person may have gained a settlement in his own right, is at the age of seven

tion, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement. 2 *Sess. C.* 150. *Andr.* 345.

And in *Comner v. Milton. T. 2 An.* A man settled at *Comner*, and having several children born in that parish, afterwards removed to *Milton* with his children, and gained a settlement there; and becoming very poor, his children born in *Comner* were by an order of two justices sent to *Comner*, viz. those that were under seven years old; the justices apprehending that the place of their birth was the place of their lawful settlement. And this order being removed into the K. B. by *certiorari*, it was insisted to maintain the order, that the children had gained a settlement in *Comner* by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at *Milton*; for his children were with him there only as nurse children, and his settlement shall not be the settlement of the children. But by *Holt Ch. J.* The place where a bastard is born is the place of his settlement, unless there is some trick to charge the parish; but the place where legitimate children are born is not the place of their settlement, for let that be where it will, the children are settled where their parents are settled; as for instance, if the father is settled in the parish of *H.* but goes to work in the parish of *B.* and before he gains any settlement there has a son born in the parish of *B.* and then dies; this child may be sent to the parish of *H.* for it is not the birth, but the settlement of the father that makes the settlement of his child; and if the father have gained a new settlement for himself, he hath likewise gained a new settlement for his children, who do not go with him to his new settlement as nurse children, but as part of his family. 2 *Salk.* 528. 3 *Salk.* 259.

E. 26 G. 3. Bucklebury v. Bradfield. *Elizabeth Knott*, aged about five years; *John Knott*, aged about two years and a half; and *Sarah Knott*, aged about one year and a half, were removed from *Bucklebury* to *Bradfield*: And in the order of removal was set forth, the names and ages of the paupers, and that they were come to inhabit, &c. and that upon due proof made thereof, as well upon the examination of *Elizabeth Knott* their grandmother, upon oath, as otherwise (and so on in the usual form,) the sessions on appeal quashed the order upon the merits, and stated the following case: That the paternal grandfather of the paupers was, at the time of his death, settled in *Bradfield*, and that he left several children by his wife *Eliz. Knott*, and amongst others *Charles Knott*, who went to *Twickenham* in 1777, where he married *Sarah Sides*, who dying about *Christmas 1784*,

If a child be born in a parish in which the father has a settlement, and the father after gain a settlement in another parish, that last parish is the settlement of those children.

Removing nurse children to the settlement of their parents. The order is good, though it takes no notice of the death, nor adjudge the place to which they are removed.

Charles brought the paupers to *Elizabeth* his mother, who was living at *Bucklebury*, in 1785, and told her they were his children, and desired her to take care of them, and he would send money for their maintenance; the paupers remained with *Elizabeth* about 14 weeks, but she not receiving any money from her son, and being unable to maintain them, they were removed to *Bradfield*, who appealed to the next sessions, and *Charles Knott* was subpoenaed but did not appear, and the appeal was adjourned, and it was recommended to the parties to endeavour at their joint expence to find *Charles Knott*; but at the next sessions he not appearing, the appeal was then heard, but was further adjourned to the next sessions, when the appeal was again heard, and the removants proceeded (according to the practice of the sessions) to support the order by the following evidence; (viz.) That *David Knott*, the paternal grandfather, had his settlement at his death in *Bradfield*, and that his son *Charles* was born there: They produced the register of the marriage of *Charles Knott* with *Sarah Slade*, and also the baptisms of the paupers. It did not appear whether *Charles* had gained any settlement subsequent to his derivative settlement, nor was any evidence given to identify the paupers to be the children of *Charles* and *Sarah Knott*, except as above. *Wilson*, in support of the order of sessions, contended, that the order was informal on the face of it; that the paupers, being nurse children, ought not to have been removed without their father or mother, unless the order had stated they were dead, otherwise the children might be settled in a different parish from their parents. Another objection was, that the order was grounded on the examination of the grandmother and not on that of the father. And there was no evidence produced at the sessions but the grandmother to identify these children, or that the father had not gained a subsequent settlement.—The other side was stopped by the court, who were clearly of opinion, that there was no objection to the competency of this evidence: and as to the other point, that it was incumbent on the parish of *Bradfield* to have shewn that the father had gained a subsequent settlement. Order of sessions quashed, and the original order confirmed. 1 T. R. 164. 2 Bott. 21. pl. 46.

Proof of the father's settlement is sufficient to establish the settlement of the son, if nothing appear to the contrary.

M. 35 G. 3. R. v. *Stone*. *Mary* the wife of *Thomas Dravenport* and *Mary* her infant daughter were removed from *Stone* to *Leighford* in *Staffordshire*. The sessions quashed the order, and stated, that *Thomas* had left his wife and family for three quarters of a year, during which time she had not heard of him, nor had he since been in either township. That the settlement of *Thomas's* father was in *Leighford*, but *Thomas* himself was not born there, and it did not appear by

by any evidence that he had gained any settlement in his own right. It was further stated that the removal had been made without any examination of *Thomas* the husband of *Mary*, and that due intelligence had not been used by the respondents to find him out. *L. Kenyon C. J.* said, that there was nothing in the case; that the evidence produced was legal evidence, and if not contradicted sufficient to establish the settlement in law; but that the sessions seemed to have thought it indispensably necessary to procure further evidence, in which they were mistaken. 6 T. R. 56. 2 Bott. 31. pl. 47.

R. v. St. Mary, Cardigan. M. 35 G. 3. The pauper's husband was settled in *L*: he was convicted of sheep stealing, and sentenced to death, but before execution he escaped from gaol. Two years afterwards he returned to *Cardigan*, and continued there till 1792, during that time he married, and the pauper had one of the other persons removed: he afterwards absconded. The wife's settlement before marriage was in *St. Mary, Cardigan*. *L. Kenyon C. J.* A settlement is not the property of any man; it cannot escheat, neither can it be called a franchise: in the case of a franchise it was rightly decided, that by attainder the franchise was lost, and that the party had no right to vote at an election. But this person was before his attainder settled in the parish to which the paupers were removed, (*L.*) and I think that the father's settlement was communicated to them. It would be another question whether the man himself could acquire a settlement after the attainder. 6 T. R. 116. 2 Bott. 22. pl. 48.

Father attaind.

St. Giler's v. Everfley Blackwater. H. 10 G. Though the place of the birth of a child, where the father hath no settlement, is the place of the settlement of the child; yet where the father hath gained a settlement, his children, though born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall be removed thither, as well after the death of their father as occasion requires, as in his life-time, supposing they have gained no settlement of their own. 2 L. Raym. 1332. 1 Str. 580. 2 Bott. 19. pl. 42.

Father dead, having gained a settlement, and the child born before the father's death.

R. v. Luckington. T. 8 W. Howel and his wife were settled at *L.* and came to *St. Austin's*, and there a child was born. The father dies in the king's service. The question was, who should keep the child? It was objected, that it was settled where born; But by *Holt C. J.* The death of the father does not alter the child's settlement. Comb. 340.

So if the father die before the child is born, yet the child

The child born after the father's death.

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settled where the father was settled before his death
Fin. 382. 2 *Bott.* 19. pl. 41.

St. Matthew's Bethnal Green v. St. Katherine's.—A man whose settlement was not known, married a woman, who was settled in the precinct of *St. Katherine's*; They had a son born in *Bethnal green*, which son married a woman settled in the parish of *St. Leonard Shoreditch*; and had several children by her. It was argued that these children ought to follow the acquired settlement of their mother, and not their father's, which was only a derivative one from their grandfather who had married a *Frenchman* that had no settlement. But not allowed by the court, who said, that there was no difference between an acquired and a derivative settlement. And the rule laid down was this, That the child's settlement follows that of its father, if its father can be traced, and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. These children were adjudged to be settled at *St. Katherine's.* *B. S. C.* 482. 2 *Bott.* 29. pl. 57.

8 G.2 R. v. St. Mary Berkhamsstead. The father died away, and the mother went and resided on an estate descended to her. One question was, Whether the children could gain a settlement, by residing with the mother on such an estate, where the father had never lived? And it was held by Lord *Hardwicke* Ch. J. That as it did not appear that the father was dead, the court must suppose him to be living; in such case the children could gain no settlement but what was derived from their father: But the matter was afterwards referred to the judges of assize. 2 *Seff.*

settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth. 1 *Seff. C.* 113.

H. 28 G. 2. St. Botolph's without Bishopsgate v. St. John's Wapping. A child of an *Irishman* having no settlement in *England*, and supposed to be on board a man of war in the *West Indies*, and of his wife being an *Englishwoman*, was adjudged to go with the mother to the mother's settlement which she had before marriage. *B. S. C.* 367. 2 *Bott.* 78. *pl.* 122. *3d post.*

The above are cases where the mother's settlement was given to the children during the life-time of the father. It is now to be considered how far their settlement will follow that of the mother, the father being dead.

St. George's v. St. Katherine's: M. 1 G. A man settled in *St. K.* married, and had six children born there, and died. After his death, the widow went into the parish of *St. George*, with her six children, and rented a house of 12 *l.* a year, and lived in it with her children four months. The single question was, Whether the children should be settled where their father was last settled, or have a settlement with the mother in the parish of *St. George*? And the whole court were of opinion that the six children were settled in the parish of *St. George*, where the mother's last settlement was.—And by *Parker C. J.*: There is no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law: and every argument that holds for their settlement with the father holds as to their settlement with the mother: The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage is, because it is then not her family but her husband's: and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley*, 254. 1 *Seff. C.* 69.

Father dead and the mother a widow, the children will follow her settlement acquired after his death.

H. 13. G. Woodend v. Paulspury. John Buncher was settled at *Woodend*, and died, leaving a widow and one daughter aged 14 years. The widow removed to *Paulspury*, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, Whether the daughter gained a settlement at *Paulspury*? And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death,

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daughter gained a settlement also as part of her father's estate, there is no difference between a father's settlement and a mother's, in such case as a mother is obliged to provide for her children, and's death, as the father was when living; and not leave this daughter behind her, neither removed from her. 2 *L. Raym.* 1473. *Fol.* 256

2 *Bott.* 24. *pl.* 51.

8 & 9 *G.* 2. *Barten Turfe v. Happisburgh.* The father hired a farm of the yearly value of 100 l. in which he occupied for about three years, and died. After his death his widow removed from the farm to *Happisburgh*, and dwelt in a house and garden there, of the yearly value of 4 l. which were given by the will of her father. And *Deborah* her daughter, then of the age of 13 years, went and lived with her mother as part of her family, for about a year and a half in the court: The daughter gained a new settlement at *Happisburgh*, by living with her mother there, as part of her father's estate, upon the mother's own estate. For a child gains a settlement under its mother after the father's death, as under its father whilst alive. The mother has the same effect upon the child as the father. *C.* 49. 2 *Bott.* 26. *pl.* 55.

and the like was held by the court in the case

to the place of their lawful settlement; for this is an accidental settlement of their mother, which was only by the marriage with the second husband, and as she is now become one person with him, shall not gain a settlement for her children.

And in the case of *Woodend v. Paulspury* aforesaid, H. 13 G. It was said that if after the husband's death the wife shall marry again to a man settled in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family, and therefore gain no settlement thereby in the parish where the father-in-law is settled.

T. 6 & 7 G. 2. *St. Giles in the Fields v. St. Clement's*. *Jacob Maile*, the pauper, was an infant of nine years of age. His father's settlement was not known: His mother's settlement before their marriage was known: His father died: His mother married a second husband, who had a settlement; and she consequently gained a new settlement by this second marriage.—By the court: *Jacob Maile's* settlement is where his mother was last settled before her marriage with *Jacob's* father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband. And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expence of the parish where their legal settlement is. B. S. C. 2. 2 Bott. 24. pl. 53.

Of intermarriage by a widow with a second husband having a settlement.

Of emancipation.

T. 7 G. *Eastwoodbay v. Westwoodbay*. Upon appeal from an order of two justices, for the removal of *Robert Baker*, from the parish of *Westwoodbay* to the parish of *Eastwoodbay*, the sessions stated for the opinion of the court: That forty years since, *Thomas Baker*, the father of the pauper was seized in fee of a freehold estate in the parish of *Hampstead Marshall*, where he lived till the year 1697, and had his son the pauper, who was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Cherbury*, where he rented a tenement of 20l. a-year, for two years: That in 1699 he purchased a copyhold estate of 11l. a-year in the parish of *Westwoodbay*, whither he removed with his son and servants, and served churchwarden and other parish offices, and paid taxes, and staid there till the year 1716: That in 1716 he purchased a cottage of 11l. 12s. 6d. a-year in *Eastwoodbay*, and went and lived upon it till his death; but *Robert* the son staid behind in *Westwoodbay*, where he married a wife, and had worked ever since on his own account, and that he is 30 years old. The sessions confirmed

Child emancipated from the father, by separating from his father (who removed to another parish,) and marrying.

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med the order of removal. It was moved to quash the order of sessions, for that the settlement of *Robert* the son was either at *Hamstead Marshall*, where he was born, and here he lived till eight years old; or if it should be carried far, as that he gained a new settlement with the father, removing with him as part of his family, according to the case of *Comner v. Milton*, yet they could carry him no further than *Westwoodhay*, which is the last place to which he accompanied his father. On the other hand it was insisted, that let the son be of what age he will, he shall follow the settlement of his father, till he gain one by his own acquisition, and it appearing he had never done any thing to gain a settlement by act of his own, either in *Hamstead Marshall*, *Bevely*, or *Westwoodhay*, then he must follow the settlement of the father as well in *Eastwoodhay* as in any of the rest. *Perrot* Ch. J. The question is not, where this man and his family are settled, but whether there appears a settlement of him in *Eastwoodhay*? If he had gone thither with his father, as part of the family, possibly it might have been a settlement of him there: but by staying behind, he was divided from his father, and therefore there is no colour to take it a settlement in *Eastwoodhay*: I think his settlement is in *Westwoodhay*, which was the last place where he lived as part of his father's family. To which the rest of the court agreed: And the order was quashed. 1 Str. 438.

father at *Ipswich*, or any where else, since he lived with him at *Bruton*. The question was, Whether the persons removed, to wit, *Edmund* the second, his wife and three children, should follow the settlement of the grandfather at *Ipswich*; or whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time? Mr. J. *Reynolds*: I do not see how the father can gain a settlement for the son so many years after the son has left him. L. Ch. J. *Raymond*: I think it is odd, that an old man of 60, who has left his father for 40 years, shall follow the settlement of his father as often as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents because of nature. And *per cur.* The reason why we enquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act; but it is almost a contradiction in terms to say, that a man, who has left his father forty years, shall follow the settlement of his father. 2 *Seff. C.* 129. 2 *Str.* 831. 2 *Barr.* 32. *pl.* 61.

Bugden v. Amphill H. 21 G. 2.—J. G. father of T. G. the pauper, came by certificate from R. to A. They remained together at A. under the certificate, till T. the pauper came of age. Then T. the pauper, being upwards of 21 years of age, married in A. and left his father, and lived there with his wife and children, distinct from his father, till removed by the present order. Three years after the marriage of T. J. the father removed from A. to B. and there gained a settlement, but never lived there. It was argued that the last settlement of the father would be the legal settlement of the son, unless the son had gained a new settlement of his own. *Contra*, it was said, that as the son did not live with his father at B. he could not gain any settlement there, being no part of his family; and the rather, because he had an independent and distinct family of his own at another place. And of that opinion was the court, who held that the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father. B. S. C. 270. 2 *Barr.* 33. *pl.* 63.

Marriage, and separation from the father, amounts to emancipation.

R. v. Everton. T. 41 G. 3. The pauper's father being legally settled in E. resided there from 1779 to 1790, with his family, including the pauper. In 1782, the pauper, being 22 years of age, married, still living in the family of the father as a part of it: In 1783 she died. The pauper still continued with his father. In 1790 he removed with his father to *Great Barford*, and while the pauper continued there with the father, the father acquired a settlement there. In 1796 the pauper married again, still continuing with his father,

Marriage by the son, is of itself an emancipation, although he continues to reside with his father's family.

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er, and had children, but he gained no settlement in his right. The pauper and his family were removed from B. to E. and the sessions affirmed the order; considering the pauper was emancipated by the first marriage. *L. Kenyon C. J.* said, that after his marriage he could follow a newly acquired settlement of the father; the order was affirmed. 5 *E. R.* 526. 2 *Bott.* 528.

R. v. Heatb. E. 34 *G.* 3. Which was a question of settlement by certificate; it appeared that the son of the defunct person married, and lived separately from his father, and it was adjudged that such a person ceased to be of his father's family, when he married and lived separate from his father. 5 *T. R.* 583. 2 *Bott.* 614. 62.

R. v. Mortlake. E. 45 *G.* 3. The like point was determined. (See this case post. *tit. Certificate.*) 2 *East*, 619. 66.

R. v. Sowerby. E. 42 *G.* 3. *R. Murdock* and his children of the same name, were removed from *St. Mary* to *Sowerby*, which order the sessions confirmed on appeal, and stated the following case; That *R. S.* went with a certificate from *D.* to *S.* and there had a son born; *R. S.* died, and the son, being of age at manhood, followed his father's business, hiring servants for it, and living with his mother in a house which he hired and rented after his father's death. She had no

own derivative settlement. The son by lifting himself for a soldier, and continuing four years in the service, became emancipated from his father's family; and not having gained any subsequent settlement for himself, must resort to his old derivative settlement at *Outwell*; and could not, after such an emancipation from his father's family, gain a settlement at *Walpole St. Peter's*, where his father had newly and subsequently gained a settlement, but had none there when the son left him and ceased to be part of his family. And a rule was made to shew cause. Which rule was made absolute, without defence. And both the orders were quashed. *B. S. C. 638. 1 Bl. R. 669. 2 Bost. 35. pl. 65.*

T. 34 G. 3. R. v. Stanwix. *Jane* and *Isabella Campbell* both widows, and the five children of *Isabella*, were removed from *St. Mary's Carlisle* to *Stanwix*, both in *Cumberland*. The sessions confirmed the order, subject to the opinion of this court on the following case: *Jane* (who is since dead, was the widow of *Alexander Campbell* a Scotchman. *Isabella* is the widow of *William Campbell*, who was the legitimate son of *Alexander* and *Jane*; and the five children are the legitimate children of *William* and *Isabella*. *Alexander* became seized of a messuage and tenement in *Stanwix* by descent, upon which he resided upwards of a year, about the years 1774 and 1775. Some time before, and until the premises in *Stanwix* descended to *Alexander*, he resided at *Glasgow* in *Scotland*, where *William*, about 19 years of age, inlisted and left his father's family in *Glasgow*, which was some years before the above premises descended to his father. *William*, after having been for some time beyond the seas as a soldier, returned to *England* about 13 years ago, (his father being then dead,) and married the pauper *Isabella* at *Plymouth*, and went beyond sea again as a soldier, and at the end of two years returned again to *England*; and about ten years ago he came to *Rickergate* quarter, an adjoining township to *Stanwix*, where he lived six years, and then removed into *St. Mary's* aforesaid, where he lived four years, but never acquired any settlement by any act of his own. *Alexander* sold part of the estate in *Stanwix* in his life-time, and resided upon the residue, consisting of a house and garden of the yearly value of 2l. 5s. till his death, which premises he devised to *Jane* his wife for life, and after her death to *William* his son, his heirs and assigns for ever. But *William* never became possessed thereof, nor resided thereon, having died in the life-time of *Jane*, who, after her husband's death, continued to reside upon the premises for several years, when she removed to her son in *St. Mary's* aforesaid, about four years ago, and continued

Where the son inlists, and thereby puts himself under the control of others, it is an emancipation.

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continued to live with him there till his death, wards with his widow, until *Jane* herself died in last. And it being urged in argument, that in *Ashton (a)*, it was said, that a child cannot be emancipated unless he has gained a settlement of his own; for that time the derivative settlement of his parents was abandoned.—*L. Kenyon Ch. J.* said, That means the son continues a part of his father's family. the son was emancipated when the father acquired a settlement in *Stanwix*; he had ceased to be a part of the family some years before, and had put himself under the control and government of others; and it is immaterial whether or not he had gained a settlement for himself. In the case of *R. v. Walpole (b)*, where the son had enlisted as a soldier, was considered so clearly to be the emancipation that it was not even argued. B. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 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is not emancipated by the circumstance of his being under some other control than that of his father. As in *R. v. Halifax*. I am therefore of opinion that this pauper was not emancipated from his father at the time when the latter gained a settlement at *W. Grose J.* Of the same opinion, as it appeared that he was only 16 years of age when he entered; that he did so with his father's consent, a serjeant in the same militia; that his father received his pay; and that till he married he lived in his father's family. *Le Blanc J.* said, that in *R. v. Walpole St. Peter's* the son was totally independent of his father for 4 years. 8 T. R. 479. 2 Bott. 50. pl. 77.

But in *Halifax v. Warley*, H. 15 G. 3. *John Bragg*, the father of the pauper, went with a certificate from *Skircoat to Halifax*, where the pauper was born. And when he (the pauper) was about 15 years of age, he bound himself an apprentice by indenture to *William Smith of Halifax*, stuff weaver, for the term of four years, and served his master there for that time. After he was out of his apprenticeship, and when he was about 19 years of age, his father took a farm of 12l. a year in *Warley*, and went and resided there several years: His son, the pauper, always after the father went to *Warley*, worked about the country as a stuff weaver, but came to his father at *Warley* when he pleased, and kept his holiday clothes there, and considered his father's house as his own home: That when he came to his father's house, he paid for what he had, and was his own master to go and work for himself whenever he pleased.—*L. Mansfield* was not in court. The other three judges thought that the son could not be considered as emancipated, or independent of or separated from his father. He went to his house when he pleased, and had his clothes there. *Mr. J. Aston* said, that where a son is become independent of his father's family, or emancipated from it, he would not acquire a settlement where his father goes to reside: But if he remains part of his father's family, he will acquire a derivative settlement where his father goes and settles. The distinction was well laid down, he said, in the *Bugden* case; and he observed that in the above case of *Walpole St. Peter's*, the son had been four years a soldier, and was emancipated from his father's family, and had ceased to be part of it. B. S. C. 806. 2 Bott. 35. pl. 66.

E. 23 G. 3. *R. v. Tottington Lower End*. *Edward Holt* and his wife and family were removed from *Broughton to Tottington Lower End* both in *Lancashire*. The sessions confirmed the order, and stated, That the pauper was the son of *Thomas Holt*, who at the time of the pauper's birth was settled in *Tottington Lower End*. When he was seven years

A son treating his father's house as his home, and so considering it, not emancipated, though he goes about the country working for himself.

Residence of a child by his father's direction at a friend's house for support, the child visiting his father's house occasionally.

Poor. (Settlement.) [Sec. VIII.]

his mother died, and he and his father went to live with uncle *Edward Holt* in the township of *Pilkington* in the county; his father boarded, but his uncle, out of pity to his father who had four other young children, to keep him off the town, *took the pauper* and provided him, meat, drink, lodging, and clothes; in about 18 months his father went to reside in *Ratcliffe* an adjoining township, but the pauper continued with his uncle till he was ten years old, about which time his uncle's wife beat (his uncle being from home), and *he went to his father's* and stayed there about a fortnight; but his father not having a loom to accommodate him as a weaver, *desired him* to turn to his uncle; which he did, and his uncle taught him to weave in the day, and sent him to school in the evenings; his uncle provided him with meat and clothing, and received the money he earned; he stayed with his uncle on these terms until he was 16 years old; but from his going to his uncle to that time, he now and then went to see his father at a holiday time or so, and sometimes stayed all night. When he was 14 years old, his father took him into *Pilkington*, and gained a new settlement there by paying 15l. a year. The pauper considered his father's house as his proper home, because he was his father; and he could have gone to him when he pleased, and his father would have received him. The father thought him-

The uncle was under no obligation to do any thing for him, or to keep him an hour : and the boy in point of fact on every disagreement went to his father's house as his home, and he received him, as he was bound to do. I see no ground to consider this as an emancipation. Both orders quashed. *Cald.* 284. 1 *Bott.* 37. pl. 67.

H. 29 G. 3. R. v. Offchurch. Henry West and Martha his wife were removed from *Thurlaston* to *Offchurch* both in *Warwickshire*. The sessions confirmed the order. The case stated (amongst other things), that the pauper was born in *Offchurch* in 1765, and resided there with his father until 1770. On his father's leaving *Offchurch*, the pauper was left with one *Leeson* at *Offchurch*, to be taken care of, his father paying for his lodging and board. The pauper continued at *Leeson's* at *Offchurch* for two years, and then went to reside with his uncle *Haddon*, who also lived at *Offchurch*, and continued to reside with him about two years, during which his uncle provided him with board, clothes, lodging, and pocket-money, and he worked with his uncle but received no wages, and was not hired as a servant. At the end of two years the pauper went to his father's at *Ladbroke*, and stayed there a week ; and then went to reside with another uncle, *Salmon* of *Welfon*, with whom he lived six years as he had done at his uncle *Haddon's*. His uncle *Salmon* provided him with board, clothes, lodging, and pocket-money, he working for *Salmon* without having been hired as a servant, or receiving any wages. On leaving his uncle *Salmon* he went and lived three weeks with his father at *Ladbroke*, where his father had obtained a settlement. The pauper has never done any act to gain a settlement.—*L. Kenyon* Ch. J. This is the weakest case of emancipation that ever was attempted to be made out. When the father left the parish of *Offchurch*, the son was only five years old ; now it cannot be pretended at that time he was emancipated, and yet he then ceased to reside in his father's family. It is also stated, that about two years afterwards, when he was about seven or eight years old, and past the age of a nurse child, he went to live with his uncle *Haddon*. Then was he emancipated at that time ? Ordinarily speaking, one of these things must happen before the son can be said to be emancipated : either he must have obtained a settlement for himself, or have become the head of a family, or at most he must have arrived at that age when he may set up in the world for himself. But here the son does not fall within either of those descriptions : no time can be stated when the emancipation may be said to have commenced. For when he went to live with his uncle *Haddon*, he was only eight years old at the most ; and he could gain no settlement either by living with

The rule for
emancipation.

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that uncle, or his other uncle *Salmon* as a servant the case states that he was not hired as a servant of them. Now during all this time the father to the custody of the son, and might have obtained *habeas corpus*, for the parental care was not taken. It is not necessary in these cases of derivation that the child should remove with the father from place, for the settlement of the father will be carried to the child: otherwise children who are sent abroad for education, and are of course separated from the father, might lose the benefit of the settlement; and when they were about to return would find themselves excluded from parental care which parents had in the mean time gained a new settlement. How long the power of communicating a settlement may continue, it is not necessary to determine in this case it certainly remained longer than till the child was nine or ten years old, and that is sufficient for the determination of this question. Both orders quashed. 2 *Bott.* 40. pl. 70.

T. 29 G. 3. R. v. Edgeworth. Henry Roth wife and family were removed from *Casleton* to *Edgeworthstown* both in *Lancashire*. The sessions confirmed the removal. It stated the following case: That *Henry Roth* was a pauper, when the pauper was about 10 years old, came to live upon a tenement at *Edgeworthstown*.

ment at *Edgeworth*. The pauper never gained any settlement for himself; and the question is, Whether he sold his father's settlement at *Edgeworth*? This case was down to be restated, whether the pauper had been apportioned to *Pollit* by indenture. The sessions returned that the pauper had been put out apprentice by indenture, which was void for want of the stamp denoting the payment of the personal duty.—The court thought this case governed the preceding case, and (without argument) discharged the rule for quashing the order of sessions. 3 T.R. 354. H. 42. pl. 71.

29 G. 3. *R. v. Witten cum Twambrookes*. George Witten and his wife and family were removed from *Stockport* to *Witten cum Twambrookes*. The sessions confirmed the removal, and stated the following case: That the pauper's father, *John Hewitt*, rented a tenement of 16l. a-year in *Witten*, &c. and resided upon it above a year, when the pauper was about six years old. The father then went to *Hewick*, where he did no act to gain a settlement; and two years after ran away from his family; and the pauper's mother, taking the pauper with her to *Congleton*, in half a year; then the pauper was left in the care of *Jane Brookes*, with whom he lived at *Congleton*, and worked at the silk mills there. And the overseers of *Witten* paid the whole or a part of his maintenance for four years to *Jane Brookes*, after which the pauper supported himself to the age of 16, at which time he got 3s. 9d. per week, and boarded himself where he liked. During the last part of the time he lived at *Congleton*, he saw his father at the distance of about four years, at which time his father did not give him any thing (except a pair of breeches, 1½d. the first, and 1½d. in money the second time). At the age of 19 years of age, the pauper went from *Congleton* to *Dunham*, and hired himself for four years, but gained no settlement thereby. He heard that his father had been so inquired after him at *Congleton*, and that he then lived at *Dunham*, to which place he went to see him, and was at that time 23 years of age, and married. It appeared that the father had made the above inquiry of his daughter, the pauper's sister, with intent, as he said, to give him a suit of clothes, as he had done less for him than any of his other children. It appeared that the father had married a second time, and held a tenement in *Dunham* of 11 l. a-year; and resided upon it eight years when his son went to see him as above, upon which visit he stayed only one hour, never saw his father at any time but as above. — But *myon* Ch. J. said, it was never conceived in any case, that a son who was only 16 years of age, and who had not

A child is not emancipated till he has gained a settlement in his own right, or has contracted a relation incompatible with that of a component part of his father's family; and a person at the age of 19, hiring himself for four years, and not gaining a settlement thereby, is not emancipated.

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gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being 21, [See *R. v. Roach, post.*] or married, or having gained settlement in his own right, or (as in the case of the soldier) having contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family. Order confirmed. 3 *T. R.* 355. 2 *Bott.* 43 pl. 72.

H. 31 G. 3. R. v. Collingbourn Ducis. E. Chandler and his wife were removed from *Collingbourn Ducis* to *Collingbourn Kingston*. The sessions quashed the order, and stated the following case: *E. Chandler* was born in *Collingbourn Kingston*, where his parents were residing under a certificate from *Froxfield*. At the age of 19 he was hired for a year to serve *J. Childs* of *Buckholt Farm* as a carter, which he served accordingly. *Buckholt Farm* is extraparochial; is not a township or vill, and has no parish officers. After the pauper had served the year at *Buckholt*, he returned to *Collingbourn Kingston*, and then, being unmarried, under age, and not having done any act to gain a settlement in his own right, further than as aforesaid, was hired to, and served, *S. Andrews* of that parish for a year. The sessions, being of opinion that the pauper was not emancipated, and that the certificate was not discharged so as to enable him

And in *R. v. New Forest*, H. 34 G. 3. On old *Martinmas-day* 1777, *E. Coates* hired himself for a year to *G. Bowe* of *New Forrest*, and served that year there: On the 22d *December* 1777, *E. Coates* married his present wife: *William Coates*, a legitimate son of his by a former wife, being within one month of the age of 16 years, and having gained no settlement in his own right, on the same *Martinmas-day* 1777 hired himself for a year to *R. Nelson* of *Ellerton*, which he accordingly served. And the question was, Whether at the second hiring the father could be considered as being an unmarried man, by the emancipation (which it was contended was at that moment complete) of his son?—*L. Kenyon* Ch. J. (after repeating the statute of *William*) said, that in this case the son was not separated from the father; when the father was hired, the son had gained no settlement for himself; he indeed did on the same day enter into a contract which might or might not have been completed, and which, when completed, would confer a settlement on the son; but at the time when the father entered into the relation of servant at *New Forrest*, the son formed a part of his family. *5 T. R.* 478. 2 *Batt.* 182. *pl.* 244.

If a son at 16, hire himself for a year, and serve that year, he nevertheless cannot be considered as having been emancipated by the mere fact of hiring.

E. 35 G. 3. *R. v. Roach*. The sessions for *Cornwall* confirmed an order for the removal of *Eliz. Rounfavel* from *St. Columb Major* to *Roach*, and stated the following case: The pauper was born in *Little Colan*, where her father then resided; he afterwards lived in *Roach* and gained a settlement there, and the pauper lived with him until after she was 21 years of age; when she was 22 years old, she was delivered of a bastard child, for the maintenance of which a bond of indemnity was given to *Roach*, and she continued still living with her father. About half a year after, she left her father's house, and went to Mr. *Henwood's*, a farmer in *Roach*, as a wet nurse, and lived there eight weeks, for which she was paid 8s. A few days after she left her father's house, he removed to *St. Columb*, where he rented 12l. a-year, and has lived there from that time; at the end of the eight weeks, the pauper returned to her father in *St. Columb*, where she has since remained, but made no contract with him as a servant, nor gained any settlement for herself.—*L. Kenyon* Ch. J. It has been very properly observed on former occasions, that this court ought to be anxious, in determining questions arising on the settlement laws, to lay down clear and distinct rules for the information of a very useful class of persons, the magistrates, who are to decide in cases of this kind. And I hope that the rule of decision which we are about to establish in this case, will fall in with every case that has been cited. For with regard to a supposed expression of mine in *R. v. Winton cum Truam-*

Where a person being 21, removes from her father's house, and goes as servant for eight weeks, and then returns to, and continues with him, it is an emancipation.

What will constitute emancipation.

brookes, there is an inaccuracy in it. I think I could not have said, because it never was my opinion, that the mere circumstance of a son's attaining the age of 21 was an emancipation so as to prevent his having a derivative settlement gained by his father afterwards, if the son continued to live with the father; for if the son, with unbroken continuance, remain with and a member of the father's family, he is not emancipated. But this proposition will not break in upon any of the cases, but may be reconciled with all of them, namely, that if a child, under the age of 21, leave his father's home, and is thereby *quæ* severed [*quasi* servant] from his father's family, and return to his father during a state of pupillage, during which time policy requires that the child should be under the protection of his father, he must be considered as incorporated with his father's family, unless he have gained a distinct settlement of his own, or have become the head of a family himself: but if a child, after a state of pupillage, sever himself from his father's family, he cannot afterwards be incorporated with it. The case of the soldier proceeded upon that principle; he had neither gained a settlement nor was in a situation to gain one, but he had ceased to be under the controul of his parents, and had become liable to the controul of others; and as he did not return to his father until after he was of age, the case was thought too clear to be argued. But it must not be inferred from the circumstances of that case not having been argued that it passed without consideration, and is not entitled to much notice; because in a subsequent case (*a*) *Aston* J. who was a very good sessions lawyer, alluded to it as a case properly decided. And if so, it must govern the present, for I cannot distinguish between them. Some stress, however, has been laid in the argument to-day, on the circumstance of that person having engaged in the situation of a soldier; but that cannot be material in any other way than as shewing that the son was no longer under the controul of his father. So, in this case, this woman was above 21; she had contracted the relation of servant with another family; she was out of her father's family; she was under no controul to him other than that arising from moral obligation and gratitude; and I cannot see how she could afterwards be deemed to be incorporated with the father's family. The rule to be extracted from the cases is this; if the child be separated from the parents, and without marrying or obtaining any settlement for himself, return to them again during the age of pupillage, he is to all intents a part of his father's family, and his settlement will vary with that of his father: but if, when that time arrives, when in esti-

(a) *Halifax v. Warley*, ante.

mation of law the child wants no further protection from the father, the child remove from the father's family, he is not for the purpose of a derivative settlement to be deemed part of that family: this rule will reconcile all the cases, and will be found to be an intelligible one. The court agreed, and the order of sessions was confirmed. 6 T. R. 247. 2 Bott. 46. pl. 75.

See also *R. v. Everton*, and *R. v. Sowerby*, ante, this title.

Sect IX. Of settlement by marriage.

The next mode of gaining a derivative settlement is by marriage, respecting which it seems to be a good general rule, that a woman marrying a husband who hath a known settlement, shall follow the husband's settlement. And although in the case of *Upbottery v. Dunkswell*, M. 1 G. (post.) it is held, that the wife shall not gain a settlement with the husband, until she have lived with him 40 days irremovable as part of his family; yet afterwards, in the case of *R. v. Pincehorton*, M. 3 G. it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's v. Everfley Blackwater*, ante H. 10 G. the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death.

Wife shall follow the husband's settlement though she never reside with him.

It seemeth also to be agreed, that a wife can gain no settlement separate and distinct from her husband; during the coverture. As in the case of *Aylborth Rooding v. White Rooding*, M. 30 G. 2. (hereafter following); where the wife, after the husband was run away, went to live upon a copyhold of her husband's, where her husband had never resided; it was held, that although she might not be removed from thence, yet (her husband being living,) she could not thereby gain a settlement. 2 Bott. 75. pl. 117.

Wife can gain no settlement separate from her husband.

It seemeth also to be agreed, that a woman marrying a husband that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great point of difference hath been, whether such settlement continue to her during the coverture, or be suspended during her coverture, and only revive after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage shall, by barely proving such marriage, avoid the settlement with them during the husband's life; or whether,

Husband dead and his place of settlement not known, the wife's maiden settlement remains.

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order to avoid such settlement, it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, where?

In relation to which case, where the husband hath no own settlement, it hath been adjudged as follows:

2 G. St. Giles's v. St. Margaret's. A woman marries a foreigner, and her husband dies.—By the court: She must be sent to the place of her settlement before marriage. *Jeff. C. 97. 2 Bott. 77. pl. 120.*

12 G. R. v. Chidingstone. It was stated, that a woman settled at *Chidingstone*, was married to a man who was since dead, but his settlement did not appear.—And the court: Her settlement before marriage stands. *2 Str.*

1 G. Uphottery v. Dunkswell. A woman is settled in *Dunkswell*, and afterwards marries a vagrant, whose settlement doth appear. But he goes and lives in *Uphottery*, and there. Two justices remove the widow to *Dunkswell*, where she was settled before marriage.—And by the court: Where it appears that the husband in his lifetime had no settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all as the case of a *Scotchman* and a foreigner, and she shall lose her former settlement. *Caf. of S. 89. 1 Jeff. C. 80.*

himself if a vagrant, may be so sent; but says nothing of his family.

M. 3 G. St. Giles's v. St. Margaret's. Sarah Ethington was settled at *St. Giles's*; and marries an *Irishman*.—By the court: The marriage will not put her in a worse condition than she was before; and they held that she continued her settlement, notwithstanding her marriage. *Cases of Sett.* 98.

An Irishman's wife

H. 12 G. R. v. Westerham. The order specially stated by the sessions was this: It appeared to the court, by the testimony of *Elizabeth Pinchen*, that she was, at the time the said order was made, a married woman, and that her husband was one *Thomas Pinchen*, who was born in *Wiltshire*, but in what place or parish he had a settlement he never informed her, nor doth she know; but that he is run away, and still living, for what she knows.—By the court: Whether the husband be living or dead, signifies nothing. For unless it appear that he has a settlement, the woman must be sent to the place of her settlement before marriage: for supposing the husband was born upon the high seas, or in *Ireland*, or a foreign country, if the woman might not be sent to the place of her settlement before marriage, she might be starved. *Foley*, 252. *B. S. C.* 368. 2 *Bott.* 77. *H.* 121.

The wife may be removed to her maiden settlement, if the husband's be not known. The husband run away.

On the contrary, *H. 12 G. 2. Stratford v. Norton*, [disapproved of in *St. John's, Wapping*, and *St. Botolph's, Bishopsgate*, (*post.*)] the case was thus: An *English* woman married an *Irishman* who had no settlement in *England*. He ran away; two justices remove the wife to the place of her settlement before marriage. And it was urged, that there could be no pretence that this separated her from her husband; and if she cannot be sent thither, she can be sent no where. But by *Lee Ch. J.* It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband have or have not a settlement; for otherwise the justices might separate husband and wife; and therefore to make the order good, it should have appeared that the man was dead.—And the order was quashed by the whole court. And there were cited these two following cases, *viz. T. 1 G. Hanway v. Marston*. It was there declared by the *Ch. J.* that the settlement of a woman, who marries a vagrant, is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because an husband and wife being as it were but one person, cannot be parted. *T. 9 G. Shadwell v. St. John's, Wapping*. One *Ridley*, a vagrant, having no settlement, married a woman who had a settlement in *St. John's, Wapping*, and had four children.

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children by her born in *Stepney*. And it was held, children were not settled in the place where they were born, but where the wife had a settlement; but that this was altered during the coverture, and it revived again at the death of the husband. *Andr.* 307. 2 *Seff. C.* 185.

B. S. C. 122 *.
Finally, in the case of *St. John's, Wapping* and *St. Andrew's, Wapping*, *H.* 28 *G.* 2. it was adjudged as follows: *Elizabeth* having gained a settlement in *St. Botolph's* by her apprenticeship and service, afterwards married *Thomas* *London*, who had no settlement in *England*. At a certain time ago, the husband entered on board a man-of-war, and went for the *West Indies*, but *Eleanor* about two years ago heard he was living: and the question was, whether she should have a settlement which she had before marriage & cohabitation, during the coverture, and she should be taken as a casual poor; or she should be sent to the settlement before marriage? After full consideration, *Ch. J.* delivered the opinion of the court: 1. That *St. Botolph's* was once her settlement, and that it was not lost. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one. On the second point he said, a settlement is a perpetual one; it lasts during life, or till a new one is gained. There is no case to be found where it has been

none? It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already; I must own the above case of *Stretford v. Norton* is not to be distinguished from the present, and is against our present opinion; to be sure we must have great regard to former resolutions in this court, but we must judge upon the case before us. How that case came to be determined so, I do not know; but there are at least four authorities the other way, (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains, having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him. *B.S.C.*
 367. 2 Bott. 76 pl. 122.

H. 18 G.3. R. v. Ryton. *Sarah Kidson* and her child were removed from *Winlayton* to *Ryton*. The sessions confirmed the order, and stated the following case: That the order of removal was in the words following: *Durham*, to wit, to the churchwardens, &c. Upon the complaint, &c. of *Winlayton* unto us, &c. that *Sarah Kidson*, the wife of *Benjamin Kidson*, a soldier in his majesty's regiment of foot called *Young Buffs*, now in *America*, and *Hannah* their daughter aged about 23 weeks, have come to inhabit, &c. &c. we do adjudge that the lawful settlement of them the said *Sarah Kidson*, and her said child, is in the said township of *Ryton*. We do therefore require, &c. By virtue of which said order the paupers were removed to *Ryton*, who gave notice of appeal.—*Ambler*, for the respondents, stated, that *Sarah* when a single woman gained a settlement in *Ryton*; that her said husband was at the time of the order in *America*, and it was not known whether he were living or dead; and that his settlement was unknown; and therefore the pauper had been removed to her settlement before marriage.—*Gill* and *Hopper contra*, objected to the order of removal, and to the respondents going into evidence of the facts stated by *Mr. Ambler*, and prayed that the order might be quashed, as it was not therein stated, that *Benjamin Kidson* was dead, nor evidence given that he was dead, nor that the place of his settlement could not be known. But the court were of opinion to admit evidence of the facts stated by *Mr. Ambler*; and the same being fully proved, discharged the appeal.—*L. Mansfield*: The sessions say, that the evidence laid before them proved that which would
 make

On removal of a wife, it is sufficient in the first instance to prove her maiden settlement.

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the order of the two justices right; and I think that the evidence the court of quarter sessions did right. Other judges concurred. Rule discharged, and both affirmed. *Cald.* 39. 2 *Bott.* 83. pl. 127.

And the same point came in question in the case of *R. v. re*, otherwise *Hedfor*, *M.* 24 *G.* 3. and was determined in the manner. *Cald.* 371. 2 *Bott.* 86. pl. 132.

And likewise in the case of *R. v. Woodsford*. *H.* 23 *G.* 3.

Pitman widow, and her 4 children, were removed from *Woodsford* to *Wimbourne Minster* in *Dorsetshire*. The court quashed the order, and stated the following case:— By rule of the quarter sessions in *Dorsetshire*, on all appeals against orders of removal, the appellants should appear in the first place shew some settlement of the appellants out of the parish appealing, in pursuance of the said rule the appellants produced a copy of the register of the birth of *Mary Scutt* in *Aspuddle*, and she swore that *Mary* was her maiden name.—The counsel on the other side objected that this was not sufficient, but that the birth of *Pitman* her husband, or some other settlement of his, ought to have been shewn, and that to identify the said *Mary* it was necessary to prove her marriage with *Pitman*. The court adjudged, that the proof of the birth of *Mary* was sufficient, and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case,

1. *Birth ; Evidence.*

Upon this head two points only arise, viz. Where and when a child was born : Of the fact of birth the register is evidence, and the identity of the party may be proved as in ordinary cases.

The parents may prove the *time* of birth ; and after their death, their declarations made in their lifetime are evidence of that fact ; but the register is only evidence of the christenings ; and *non constat* thence, when the child was born. *Per Lord Mansfield C. J. Goodright v. Moss. E. 17 G.3. Cowp. 591.* Time of birth.

Of the *place* of birth, the following case has decided how far the parents' declarations shall be evidence. Place of birth.

R. v. Erith. T. 47 G. 3. Upon appeal against an order of removal, it appeared on the evidence of the pauper, that the pauper remembered being at *Erith* with his father ; that they had no fixed residence ; and that his father, who was now dead, had told him that he was born a bastard at *Erith*, and had pointed to that place as they were passing, telling him that that was the place of his (the pauper's) birth. The respondents also proved a search made in the books of the parish of *E.* and that no register of the pauper's baptism was to be found there. The sessions thought this sufficient evidence of the pauper's birth at *E.* and confirmed the order. At a future day the judgment of the court was delivered. Hearsay declaration of the father, as to the place of his son's birth, is not evidence.

Per Lord Ellenborough C. J. The controversy was not, as in a case of pedigree, from what *parents* the child derived its birth, but in *what place* an undisputed birth, derived from known and acknowledged parents, has happened. The point thus stated turns on a single fact, involving no question but that of locality, and therefore not governed by the rules applicable to cases of pedigree ; and is to be proved therefore as other facts generally are proved, according to the ordinary course of the common law ; that is, by evidence to which the objection of *hearsay* does not apply. We are therefore upon this ground, of opinion that the evidence of the father's declaration as to the birth-place of the pauper, the bastard, ought not to have been received. Order of sessions quashed. . 8 *E. R.* 539.

2. *Legitimacy ; Evidence.*

The first proof requisite to sustain the legitimacy of the party is, that a marriage was duly solemnized between the Marriage.
parents.

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ts. Of this see the several cases *post.* title *Marriage, &c.*, *this Sect.* (4).

er this, the mere fact that the child was born of those who will be sufficient to call upon the other side to shew the fact of bastardy.

in the former, so in the present case, the register and proof of identity will be sufficient; and also the parents may be examined to the fact of legitimacy, and their declarations upon that subject, or their treating a child as legitimate, will, after their death, be evidence of the fact of legitimacy.

Adright v. Mofs. E. 17 G. 3. It was in this case decided that the mother may be examined to the fact of the legitimacy of her children. And that the treatment of a child by a parent in his family, as illegitimate, would be evidence. And also the declarations of parents in their lifetime.

that after marriage, they shall not be permitted to say, that they have had no connection, and therefore that the child is spurious. *Cowp.* 591.

also in *R. v. Bramley.* T. 35 G. 3. It was recognised that the husband was a competent witness with respect to the legitimacy of their issue. 6 T. R. 330.

3. *Bastardy; Evidence.*

Ashe, as wandering persons from place to place, till the death of the said *H. A.*, which was about 15 weeks since; and that during all that time they cohabited and lay together as man and wife, and it did not appear that the marriage was ever questioned in the lifetime of the said *H.*; that during the time that he and the said *H.* did so cohabit as man and wife, she was delivered of 3 children; that the said *J.* one of them, who was the person removed by the said order, was born in the said parish of *O. S.*; that the said *J.* and the other two children were reputed as his children, and baptized as the legitimate child of him and the said *H. A.*; that he and the said *H. A.* were never married. And it appearing to the sessions, upon the evidence of the said *J. H.* that the said *Joseph*, the infant, was born during the time that the said *J.* and *H.* did cohabit and lie together, and were reputed as husband and wife, and there being no other evidence, they were of opinion that the evidence of the said *J. H.* could not support the order so as to bastardize the said *J.* the infant removed. And in support of the order of sessions it was observed, that this man could not be a proper witness in the case; for nobody could be adjudged a bastard without the evidence of the woman. But by *L. Hardw. C. J.* There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. And what is there to make him an incompetent witness? It was an objection to an order of bastardy two terms ago, (*R. v. Willey*), that it was founded upon the evidence of a married woman, which ought not to be admitted to discharge her husband. But this man doth not swear to discharge himself. For whether he be the legitimate or only the natural father of the child, he is equally bound to maintain it. *B. S. C. 25. 2 Bott. 4. pl. 12.*

mother's life,
that he had been
married.

In *R. v. Bramley*. *T. 35 G. 3.* Upon an appeal against an order of removal; the sessions refused to receive the mother as a witness to prove that she never had been married; or had been illegally married; and also the declarations of the father and mother to that effect, they having cohabited together and been reputed as man and wife till the death of the father. But *L. Kenyon C. J.* held that this evidence was certainly admissible: that parents may be called to prove the children illegitimate. *6 T. R. 330.*

Parents may
prove that they
were never
married.

In *Goodright v. Moss*. *E. 17 G. 3.* It was held by *L. Mansfield*, that even where the fact of marriage is proved, the parents may prove the time when the issue was born, whether it was before or after the marriage. But he also said that after marriage the parents should not be permitted to say they had no connection. *Cowp. 591.*

Parents being
married may
prove the time
of birth.

However

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However in *R. v. Bramley*, (above) which was a case where the mother was called to prove the marriage illegal, Lord Kenyon said that such evidence was open to very close observation.

The question has been raised, how far the wife may be permitted to prove the non-access of her husband, and to what extent the fact of non-access shall basify the issue.—These points were fully considered in the case of *R. v. Luffe*, so as to render the introduction of other cases relating to this point unnecessary in this place.

R. v. Luffe. H. 47 G. 3. An order of bastardy was made, adjudging *M. Taylor* to be the mother of a bastard child; and the order stated her to be the wife of *J. T.*, that it appeared as well on the oath of the said *M. T.* otherwise, that her husband had been beyond the seas, that she did not see her said husband, or *had access to* from &c. &c., and that the husband returned only 14 days before the birth, and adjudging as well on the oath of the said *M. T.* as otherwise, the said *H. L.* to be the reputed father of the said bastard child. One point was, that the wife was admitted to prove non-access, which it was contended she was not to have been. And it was held by Lord Ellenborough C. J. that the wife might prove the fact of her connection with that person whom she charges as being the real father of the child. And the whole of the judgment of the C. J. and the other judges went upon the supposition that the wife

receivable, would be to overthrow the cases of *R. v. Reading*, &c. which were not meant to be over-ruled in *R. v. Luffe*; the court intending in that case that the wife had only been examined to the facts she might legally prove, and not to the non-access of the husband. And the court also said that the death of the husband made no difference. 11 *E. R.* 132.

4. *Evidence of Marriage.*

In *R. v. Binegar*. *E.* 46 G. 3. An order of removal was made upon the examination of the wife, removing *J. S.* and *B.* his wife from *K.* to *Midfomer Norton*, and adjudging that they were last legally settled in *M.* And the wife was removed from *K.* to *M.* And no appeal against the order. Afterwards the same woman was removed from the parish of *Wellow* to *M.* And against this second order there was no appeal. After this she hired herself for a year to a person at *Binegar*, and served the year, her husband *J. S.* being living. Then she returned to *M.* and became chargeable there; and afterwards *J. S.* was convicted for having run away and left his wife so chargeable. The respondents produced evidence that the marriage solemnized between the said *J. S.* and *B.* before either of the orders of removal, was a nullity, and such nullity was not disputed.

An order of removal, removing a woman as the wife of *J. S.* to the parish of *M.* and unappealed against, is conclusive of the fact of marriage, as to that parish, against all the world.

The question for the court of king's bench was, whether or not the respondents were estopped either by the former orders of removal, or by the adjudication that he was a vagrant for leaving his wife *B.* who was in such adjudication considered as his wife, from giving any evidence whatever to prove the said marriage a nullity. The sessions affirmed the order of removal.

And in support of the order of sessions it was said, *inter alia*, that the first removal was bad, as being of the husband and wife upon the examination of the wife alone, who could only know the fact of her husband's settlement by hearsay from him. (*L. Ellenborough C. J.* That does not follow, she may know the fact as well as any other witness.) And it was held by all the court, that the first order of removal was good upon the face of it, and, according to *R. v. Silchester*, (*B. S. C.* 551,) conclusive upon the question of marriage, which was involved in the judgment of the justices. Orders quashed. 7 *E. R.* 379.

Other parishes, however, are not estopped from disputing the validity of the marriage.

Hitherto it hath been somewhat doubtful, what shall be deemed a sufficient marriage, so as that a woman shall gain a settlement thereby; and the courts have been favourable in

What shall be deemed a sufficient marriage, so as to gain a settlement.

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ing marriages, although not strictly solemnized according to the laws of the church; but now by the statute 26 G. 2. c. 33. a great distinction is made between marriages solemnized before the 25th day of *March* 1754, after that time: for by the said statute it is enacted, that *March* 25th, 1754, all marriages (except in *Scotland*, except the marriages of Jews and Quakers, where both parties are Jews or Quakers respectively), which shall be solemnized without licence or publication of banns, or in any other place than a church or public chapel wherein banns of matrimony have been usually published, (unless by special licence from the archbishop of *Canterbury*,) or without the consent of parents or guardians, (where either of the parties, not being a widower or widow, is under the age of 21, shall be null and void to all intents and purposes whatsoever.

As in the case of *Chilham v. Preston*, M. 33 G. 2. Two justices removed *Edward Young*, *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston* near *Faversham*, both in Kent. And the sessions confirmed the order of the two justices.—The case stated was, that the said *Edward Young*, being legally settled in *Preston*, (and not being then a widower,) was on the 25th of *January* 1758, without the consent of his father, who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury*

should afterwards agree to it, wherever the fact appears directly contrary to the statute.—And by the whole court : Let the order be quashed as to *Rebecca* and the child, and confirmed as to the pauper *Edward*. *B. S. C.* 486. 1 *Bl. Rep.* 192. *Bott.* 65. *pl.* 105.

H. 26 *G.* 3. *Stanton* upon *Hine Heath v. Hordnett*. *Mary Miles* and *Ann* her infant daughter were removed from *Stanton* to *Hordnett*. The sessions confirmed the order, and stated the following case : That *Mary Miles*, an illegitimate child, was born at *Hordnett* ; that she was married on the 10th *January* 1782, she being then under 21 years of age, to *Richard Teece*, who was born at *Stanton*, and was also under 21 years of age, and illegitimate : that his putative father died in 1779. and his mother in 1764. The putative father of *Mary* died several years before her marriage, and her mother in 1772 married *Richard Lowe*, who as well as his wife are still living. Neither *Richard Teece* nor *Mary Miles* had ever any guardians appointed, nor was any consent given to their marriage by any person acting in that character, nor by the parents on either side, but the said *Richard Teece*, who applied for a licence, swore that the parties were both of age.—The question for the opinion of the court turned on the validity of this marriage.—After hearing counsel on both sides, *L. Mansfield* said, the question is, What is the law ? The meaning of the act [*26 G. 2. c. 33.*] is, that where there is the consent of a father, or guardian lawfully appointed, or of a mother, or guardian appointed by the court of chancery, the marriage shall be valid ; but here there was no consent by any one, consequently, in my opinion, it is void by the marriage act. There is no reason to except illegitimate marriage, for they are within the mischiefs intended to be remedied by the act. Both orders confirmed. 1 *T. R.* 96. 2 *Bott.* 73. 114.

Illegitimate children within the marriage act.

In *Horner v. Liddiard*. Sir *William Scott* is of opinion that illegitimate minors are within the statute, and therefore that consent is necessary to render the marriage valid, and that consent can lawfully be given only by a guardian appointed by the court of chancery, and that otherwise the marriage is a nullity.

Whose consent is necessary in the case of illegitimate minors ?

In *Priestly v. Hughes*, *E.* 49 *G.* 3. It was decided by three judges, after a most learned argument, that all marriages whether of legitimate or illegitimate persons, are within the general provision of the statute *26 G. 2. c. 33.* which requires all marriages to be by banns or licence ; and that the consent of the natural mother to the marriage by licence of an illegitimate minor is not a sufficient consent within the 11th section of that act.—*Grose J.* differed from the other three judges, and thought that such were not within that section

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the act. He thought that the legislature had only in contemplation the marriages by licence of such legitimate children who had or might have either parents to consent to the marriage of such children, or guardians whom the legislature intended to substitute for such parents under different circumstances: and that they had not in their contemplation provide for the marriages of illegitimate children whose parents could not legally forbid the banns, if they were to be married by banns, and who could have no such parents are intended to be described in the said 11th section, that legitimate parents, if they were to be married by licence.

E. R. 1.

Crompton v. Bearcroft, M. 8 G. 3. It was held that the marriage in *Scotland* of two persons, who being under age, had run away, without the consent of the woman's guardian, was good. 2 *Bett.* 70. *pl.* 111.

By the custom of *Scotland*, cohabitation and being commonly reputed man and wife, constitutes marriage. 2 *Burn's ecclesiastical Law*, 474.

In *Robinson v. Eland. M. 1 G. 3.* Lord *Mansfield*, reasoning upon that case, said, It has been laid down at the bar, that a marriage in a foreign country must be governed by the law of that country where the marriage was had, which in general is true. *Burr.* 1079.

Marriages by *Romish priests*, whose orders are acknow-

Salk. 119. to shew that the marriage must be celebrated by a person in holy orders; and *Fielding's case*, 5 *St. Tr.* 610. to shew that there ought to be proof that the person officiating was a priest. And also it was said, that here the service, though performed by a *French* priest, in a *Roman catholic* country, was understood to be performed according to the rite of the church of *England*.

On the other side it was said, that the facts proved raised a presumption that the ceremony was legally performed according to the law of the country, unless the contrary were shewn. And that in *Haydon v. Gould*, it was found as a fact that the person officiating was a layman: and that decision went upon the ground, that as the husband demanded a right in the ecclesiastical court, which was only due to him by the ecclesiastical law, he must prove himself a husband according to that law. But the court seem to have distinguished his claim from that of the wife or issue, entitling themselves by such marriage to a temporal right. They also cited *Jesson v. Collins*, *Salk.* 437. Where Lord C. J. *Holt* said, that a contract *per verba de presenti* was a marriage, viz. "I marry you;" "you and I are man and wife:" and *S. C. 6 Mod.* 155. that such a contract "amounts to an actual marriage," as if it had been in *facie ecclesie*. That in *R. v. Fielding*, the marriage there was held good, on evidence of the words of present contract, which were spoken in *English*, the rest of the ceremony being read in the *Latin* tongue, which the witnesses present did not understand. That marriages by *English* subjects have often been made abroad in the chapels of our ambassadors. That if celebrated openly the presumption is that they are valid: That the *onus* of shewing them to be void was on the other side. They cited the (preceding) cases of *R. v. Stockland* and *Morris v. Miller*.

Per Lord *Ellenborough* C. J. (After stating the facts of the case, and saying that he must take them as believed to be true by the sessions,) First, considering it as a marriage celebrated in a place where the law of *England* prevailed; for I may suppose in the absence of any evidence to the contrary, that the law of *England*, ecclesiastical and civil, was recognized by subjects of *England* in a place occupied by the king's troops, who would impliedly carry that law with them; Then, Was it a good marriage before the marriage act? Certainly, before that act a contract of marriage *per verba de presenti* would have bound the parties: this was such a marriage and performed by one who publicly assumed the office of a priest, and appeared habited as such; of what persuasion does not appear: but even if it were performed by a *Roman catholic* priest, the case would be the same; for such a person would be recognized by our church as a priest capable of officiating as such, upon his

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ere renunciation of the errors of the church of
v. *Fielding* shews that a marriage by a Roman
priest (before the marriage act) was effectual for
purpose, which was considered as a contract *per ve*
nti. In this case the ceremony was performed in
chapel, instead of in private lodgings as in *Field*
considering therefore the case to be that the ki
married with them the law of *England* to *St. D*
which they and other subjects who accompanied
the absence of proof that any other law was in fi
may be considered as continuing to be governed,
a good marriage by that law. But supposing
England not to have been carried to *St. Dom*
ing's forces, nor obligatory upon them in this
let us consider whether the facts stated wou
vidence of a good marriage according to the la
country whatever it might be. And indeed, afte
mony of marriage, as it was understood and inten
parties at the time to be, performed openly in a
person appearing there as a priest authorized
the ceremony of marriage, and this followed by
tion between the parties for 11 years afterwa
presumption is to be raised in favour of its validity
have considered myself as safe in resting my
view of this marriage upon the law of *England*.

duly consecrated, and in which divine service had been publicly and regularly celebrated ever since; and wherein banns of matrimony had been often published, and marriages celebrated previous to the marriage in question: That the said chapel was a new one, erected since the marriage act, and not erected on the foundation of one that was ancient; and no act of parliament was obtained for erecting the said chapel, or for celebrating marriages there. The two orders being removed into the court of king's bench, the question was, Whether the marriage was void by the provisions of the said act?—On shewing cause, it was contended that the words *usually published* in the act, ought to be considered to mean, usually at the time when the marriage in question took place. If so, there was enough stated in the case for the court to consider this as a chapel in which banns had been usually published.—*L. Mansfield*: I was for some time averse to determine a question of such serious consequence in a collateral way, on a settlement case. But upon more consideration, I think we ought now to decide it. If there has been an abuse, we ought to stop it as early as possible. A delay might lead to a supposition that we doubt, when in truth we do not. The act clearly meant chapels existing at the time. I am of opinion that this marriage was void by the provisions of the statute. *Doug.* 634. *Cald.* 115. [Soon after this determination was known, an act was passed 21 G. 3. c. 53. for making all marriages which had been solemnized in any parish church or public chapel erected since the statute of the 26 G. 2. and consecrated valid in law, and to exempt the clergymen who had solemnized such marriages from the penalties of that statute.]

By the 44 G. 3. c. 77. It is enacted, that all marriages solemnized or to be solemnized before 25th March 1805, in churches or chapels erected since the making of the 26 G. 2. c. 33. and consecrated, shall be good and valid in law. And the ministers solemnizing them indemnified from the penalties of the former statute.

By the 48 G. 3. c. 127. The like provisions are enacted with respect to all marriages so solemnized or to be solemnized before the 23d August 1808. The registers are to be preserved and to be evidence as in 26 G. 2. c. 33.

E. 2 G. 3. St. Devereux v. Much Dewchurch. The question before the sessions was, Whether the marriage of *John* and *Susannah Meredith* was sufficiently proved? One witness made oath, that he and another witness were present on the 7th day of February 1758, when a marriage was solemnized in the parish church of *St. Devereux*, between the said *John* and *Susannah Meredith*, by the minister of the said

Not necessary to prove publication of banns, but it is enough for one present at the ceremony to prove the fact of marriage.

is proved; or bell ringers came to the parties, and said they rung for the wedding, and were paid by them; or people dined at the wedding dinner; or other circumstances to ascertain the parties. *Buller's N. P.* 27, 28.

Though according to the preceding case of *St. Devereux* it is not necessary for the party insisting on the marriage to prove publication of the banns, yet the want of due publication may be shewn on the other side. *Standen v. Standen. Peake's N. P. Ca.* 32.

Non-publication of banns.

E. 7 G. 3. Morris v. Miller. On an action for criminal conversation with the plaintiff's wife, the question was, Whether, to support the action, there must not be proof of an actual marriage? The fact was, they were married at *Mayfair* chapel. The register or books could not be admitted in evidence—*Keith*, who married them, was transported; and the clerk, who was present at the marriage, was dead. So that the plaintiff could not prove the actual marriage by any evidence. But the counsel for the plaintiff proved articles between the man and his wife, made after marriage, for settling of the wife's estate, with the privacy of relations on both sides. They proved cohabitation, name, and reception of her by every one as his wife, and insisted that this evidence was admissible; and that lately in ejectment, before *L. Mansfield*, this sort of evidence was offered and received. Unto which *L. Mansfield* said, It certainly may be done so, in all cases except two: One is in prosecutions for bigamy; and this case (if such proof cannot be here received) is the other. It was proved further, that the defendant *Miller* confessed to the landlord of the lodgings, that she was Captain *Morris's* wife, and that he the defendant had committed adultery with her: And confession is the strongest evidence. —*L. Mansfield*: I do not at present remember any action for criminal conversation, when an actual marriage was not proved. Proof of actual marriage is always used and understood in opposition to proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred: But we will take time to consider of it. Afterwards, he delivered the resolution of the court: In these actions there must be proof of a marriage in fact, as contrasted to cohabitation and reputation of marriage arising from thence. Perhaps there need not be strict proof from the register, or by a person present; but strong evidence must be had of the fact, as by a person present at the wedding dinner, if the register be burnt, and the minister and clerk are dead. The case of bigamy is stronger than this. And on an indictment for that offence *Dennison J.* on the *Norfolk* circuit ruled, that though a lawful canonical marriage need not be proved, yet a marriage in fact (whether regular or not) must be shewn.

In all cases but of prosecution for bigamy, and actions of crim. con. reputation is good proof of marriage, where direct proof can not be obtained

Rur

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except in these two cases, I know of none, where reputation is not a good proof of marriage. 4 Burr. 2057. 10 Mod. 632. 2 Bott. 69. pl. 110.

2 G. 3. *Stockland v. Chardland.* *John Moes* and *Elizabeth Mason*, father and mother of the pauper, being both born in the parish of *Chardland*, about the year 1723, went from thence together, declaring they were going to be married; and soon returned, declaring they had been married. And from thenceforward cohabited as man and wife about 30 years, until the death of the said *Elizabeth*. The pauper was born at *Chardland* in 1725, and there baptized, his baptism registered as the son of *John* and *Elizabeth*. The said *John* and *Elizabeth*, some years before the death of the said *Elizabeth*, removed from the said parish of *Chardland* to the parish of *Stockland*, and there acquired a settlement by renting a tenement of 50l. a-year. They carried with them, from *Chardland* to *Stockland*, the said pauper's son, whose settlement depended upon this question, whether the said *John* and *Elizabeth*, the father and mother of the pauper, were to be considered as husband and wife at the time of his birth? It was contended at the sessions, that the said *John* and *Elizabeth* were never married; or if they were, that the said *Elizabeth* had a former husband then living, concerning which, several witnesses having been examined on both sides, the said *John Moes* the father was produced, in order to prove that he and the said *Elizabeth* were never married, and that the supposed other husband was then living. The court refused to receive his testimony. And on consideration of the evidence before the court, they were of

produced, who proved that they had cohabited and lived together as man and wife, and were reputed to be man and wife till his death. The appellants offered to produce *Sarah* as a witness, to prove that she never was married, or, if she was, it was in *Ireland*, under such circumstances as rendered it void. The appellants also offered witnesses to prove the declarations made both by *James* and *Sarah*, at different times, that they were never married. The respondents insisted that this evidence was inadmissible; and the sessions being of that opinion, rejected the same, and confirmed the order, subject to the opinion of this court, whether the evidence offered were admissible or not.—By *L. Kenyon C. J.* This evidence was certainly admissible, though the justices were to judge of the effect of it. In the case of *R. v. St. Peter's*, it was expressly held, that the supposed husband was a competent witness to disprove the marriage. There are also many other cases, in which it has been decided, that the parents may be called as witnesses with respect to the legitimacy of their issue, and if they may be called to prove that they are legitimate children, there is no reason why they should be considered as incompetent when called to prove that the children are illegitimate; but in all these cases such testimony is open to great observation. 6 *T. R.* 330. 2 *Bott.* 749. pl. 898.

who was reputed her husband, though by such evidence she bastardize her issue

So also it had been determined in *Goodright v. Moss*. *R.* 17 *G.* 3. that the father and mother might be examined to the fact of marriage. *Cowp.* 591.

Although it be generally true that no settlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good, for the following cases do proceed upon such suppositions:

Marriage fraudulently procured.

M. 11 G. R. v. Edwards. The overseers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where the husband was settled. By the court: If there be a conspiracy to let lands of 10l. a-year to a poor man, in order to gain him a settlement, or to make a certificate man a parish officer, or to send a woman big of a bastard child, into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed for want of averment, that the woman was last legally settled in the parish relieved by her marriage. 3 *Mod.* 321. 1 *Seff. C.* 165. 1 *Bott.* 334. pl. 405.

H. 6 G. 2. R. v. Parkins. A single woman of *Studley*, big with child of a bastard, was sent back to *S. Parkins*, overseer

of

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Studley, threatened with all the severity of the law, for inducing her to marry a stranger of another parish, against her consent, he giving five guineas to the keeper for keeping him in liquor.—By the court: Shew evidence that the information should not go. 1 *Seff. c.* 176.

R. v. Watson. M. 17 G. 2. An information was laid against *Watson* and others, for procuring one *Vine*, who had a settlement in the parish of *Brill*, to marry a woman who was an idiot, and chargeable to the parish of *Brill*, by giving a certain reward to *Vine*, who was not chargeable to *Brill*. 1 *Wils.* 41. And see *Ant. T. 7. G. 3.*

R. v. Crompton, et al. H. 23 G. 3. the same offence.

SECT. X. Settlement by hiring and service.

By the 13 & 14 G. 2. c. 12. s. 1. After reciting that it should be lawful upon complaint made to the justices of the peace, within 40 days after any such person has been legally settled as in the act aforesaid, (alluding to the provisions of the act), in any tenement the yearly value of 10*l.* for any two justices (1 *G. 2. c.* 12. s. 1.) to remove such person from the parish where he was last legally settled, either as a householder, journeyman, apprentice, or for

By the 3 & 4 W. & M. c. 11. f. 3. It was enacted, that the notice in writing (required by the stat. of 7. 2.) should be by the churchwarden or overseer caused to be read publicly immediately after divine service in the church of the parish or town, on the next lord's day when there should be divine service therein, and that the 40 days continuance intended by the said acts to make a settlement should be accounted from the said publication of the said notice.

By f. 6. If any person who should come to inhabit in any town or parish, should for himself and on his own account execute any public annual office or charge in the said town or parish, during one whole year, or should be charged with and pay his share towards the public taxes and levies of the said town or parish, then he should be adjudged to have a legal settlement in the same, though no such notice in writing were delivered and published as aforesaid.

And by f. 7. If any unmarried person, not having child or children, should be lawfully hired into any parish or town for one year, such service should be adjudged a good settlement therein, though no such notice in writing were delivered as aforesaid.

And by f. 8. If any person should be bound an apprentice by indenture, and inhabit in any town or parish, such binding should be adjudged a good settlement, though no such notice were delivered as aforesaid.

By 8 & 9 W. c. 30. Whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, it is enacted and declared, that no such person so hired as aforesaid shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

By the 35 G. 3. c. 101. f. 1. The justices shall remove no poor person from the parish or place where he shall be inhabiting, until such person shall have become actually chargeable.

By f. 3. No person coming into any parish township or place shall, from the passing of this act, be enabled to gain any settlement therein by delivery and publication of notice in writing.

And by f. 4. No settlement shall be gained by any person by being charged with and paying his share of the public taxes or levies, in respect of any tenement under the yearly value of 10*l*.

So

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So that upon the whole it appears that no settlement can be gained by delivery of notice, or by paying a fine in respect of a tenement under the yearly value of 10*l.*

But a settlement may be gained, 1st. By service; 2d. By apprenticeship; 3d. By renting a house of 10*l.* annual value; 4th. By executing a public charge in the parish on a man's own account; 5th. By payment of rates; and in these several cases 40 days residence is required.

To these may be added the residence for 40 days on his own estate; which, where he comes to it, may be of any value: where by purchase, must be of 30*l.*

There are also provisions enacted by statute, which prevent persons coming into parishes under certain circumstances from acquiring any settlement in those parishes where these are within the operation of those provisions.

By *f. 7. of 3 W. c. 11.* as has been before observed, persons hired into any parish must be unmarried, and without children, in order to the acquiring a settlement in that parish by service under that hiring.

And by the *9 & 10 W. c. 11.* No person coming into any parish by a certificate, shall be allowed to do any act whatsoever, to have procured a legal settlement in such parish, unless he shall *bona fide* take a lease

3. *The performance of it, and herein of what is a dissolution, and what a dispensation.*
4. *The place in which the settlement will be, as far as residence is concerned.*
5. *Who may, or may not acquire a settlement by hiring and service.*

Anthony v. Cardigan. E. 12 W. It was decided that a widower was within the spirit of the act, and might gain a settlement by hiring and service. 2 Bott. 177. pl. 236.

A widower is within the word unmarried.

In *R. v. Bank Newton.* E. 31. G. 2. The pauper, then married, agreed on the 16th of February with the son of H. W. to serve H. W. for a year from the 24th of that month at 5 guineas wages, provided the said H. W. should approve the said terms. On the 18th the wife died: on the 24th the pauper went into the service of H. W. who on that day agreed to the terms made by his son. And by the court: it is clear that the hiring was on the 24th, for the father might have dissented from the conditional agreement made by the son on the 16th, and a settlement was therefore gained by the hiring and service. B. S. C. 455. 2 Bott. 9. pl. 230.

If a married man hire himself subject to approbation, and his wife die before the agreement is complete, and then the agreement be completed, a settlement will be gained by service under it.

R. v. Allendale. T. 29 G. 3. J. D. and his wife were moved from Lambley to Allendale. The sessions confirmed the order, subject to the opinion of the court on the following case. In February 1786, the pauper, being then an unmarried man not having child or children, was hired for a year to serve T. B. at Allendale, from May-day 1786 to May-day 1787, as a hind. It is the custom of the country to employ married men as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and servant, and perfectly understood by them at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, before the commencement of the service, he married a wife, the other pauper, and entered upon his service as a married man, and served out the whole year a married man at Allendale. Against the order of sessions it was contended, that the time when the service commences, and not the time of hiring, is the criterion by which the court is guided, in determining whether or not the case comes within the act.

The time to be attended to, is the time when the contract is made. Marrying between the hiring and entering into the service will not defeat the settlement.

By Lord Kenyon C. J. The principle on which this question must be decided has been long since settled. In the cases of *Farrington v. Witty*, and *Bank Newton v. Marion*,

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Morton, the court seemed to think, that the time to be attended to was *the time when the contract was made*, which has ever since been considered as the rule; he was unmarried when he entered into his contract; and whether he married the day before the service commenced or afterwards, it makes no difference.—*Buller J.* said, that neither the custom of the country, nor the agreement between the parties, would compel this pauper to marry before he entered upon this service; he was at liberty to do so or not, as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female; it is therefore indifferent to the master whether the servant be married or not, because if he be single he must hire some female to perform those services. 3 *T. R.* 382. 2 *Bott.* 180. *pl.* 242.

And in the same term the same point was given up without argument, in *R. v. Stannington*. 3 *T. R.* 385. 2 *Bott.* 181. (*n.*)

And in the same case of *R. v. Allendale*, it seems (by *Buller J.*) that if the marriage take place during the interval between the contract of hiring and the commencement of service, for the purpose of fraudulently evading the statute such fraud will defeat the settlement.

In *Farrington v. Witty*. *E. 1 An.* Where a servant hired for a year, served half a year and then married, it was determined that the marriage did not defeat the settlement, and

'*Not having child or children*'] In the before recited case of *Antony v. Cardigan*, a person having a daughter which was married and lived settled elsewhere, hired himself for a year; and it was decided that he was a single person within the meaning of the act, though not expressly within the letter of it. That the meaning of the statute was, that he might not bring any consequential damage to the parish; which he could not possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Foley*, 131. 2 *Bott.* 177. pl. 236.

An emancipated child is not within the meaning of 3 *W. c.* 11. s. 7.

In *R. v. New Forest*. H. 34 G. 3. On Martinmas-day 1777, *E. Coates* hired himself and served a year in the township of *New Forest*; on 22 December 1777 he married. The pauper, a legitimate son of *E. C.* by a former wife, on the same Martinmas-day, (being under 16, and without having gained a settlement,) hired himself for a year to *R. N. of Ellerton*, and served the year. — Per *L. Kenyon C. J.* The construction which the court has put upon the 3 *W. c.* 11. s. 7. is, that though the person so hired have children, yet if they have gained settlements for themselves, distinct from the father's, the statute will not prevent his acquiring a settlement by serving a year under that hiring. But here the son was not separated from the father when the latter was hired; he had gained no settlement for himself; he had entered into a contract, which when completed would give him a settlement; but at the time when the father entered into the relation of a servant at *New Forest*, the son formed a part of his family. 5 *T. R.* 478. 2 *Bott.* 182. pl. 244.

In *R. v. Cowhoneybourne*. T. 48 G. 3. The case stated, that the pauper, after his wife's death, hired himself and served 5 years under a hiring for a year at *T.* On the death of the pauper's wife his brother-in-law took the pauper's child, an infant, out of kindness to him. His daughter also (11 years of age) went with his consent to *N.* the brother-in-law, to nurse her sister, who died in a year. She lived with *N.* for sometime, under circumstances which in the opinion of the court did amount to emancipation, and they therefore held agreeably to the foregoing cases, that the pauper being an unmarried person within the words of the act at the time of entering into his service at *T.*, did gain a settlement there by hiring and service. 10 *E. R.* 88.—This case, and the general questions of emancipation, have been considered, *ante*, tit. *Birth*.

2. *Of the contract of hiring: as to the parties.*

As to the parties, it seems clear that no nearness of

Relationship.
relation.

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tionship will prevent the gaining a settlement by hiring service.

Chesham v. Miffenden. T. 13 An. Sarah Barnes, having settlement of her own, lived with her father, who was a poor man and had no settlement, for a year as a hired servant, in a little cottage upon the waste, for 10 s. a-year, besides what she could get by her service and labour. And the whole court held she gained a settlement thereby; that there was no ground of fraud; for it was to live with him, so might be grown old. *Foley*, 142. 2 *Bott.* 178. pl. 237.

R. v. Chertsey. T. 27 G. 3. The hiring and service was held to gain a settlement, although it took place between a father and daughter. (See *post*, this title.) Neither, according to the former of these two cases is it necessary that the person hiring the servant should have a settlement in the parish, although that circumstance may, when connected with others, be a reason for suspecting fraud.

One person may also, by the authority of another, contract for that other.

And a settlement may be gained by a hiring to and serving as joint tenants.

And the master need not live in the parish where the servant serves. 2 *Bott.* 274. pl. 335.

And an infant may hire himself as in *R. v. Wincaunton*.

the subject. On the day after *Michaelmas* he went to *F.* who received him, and told him he would give him cloaths, and that he was to stay with him a-year. The pauper did stay the year, receiving cloaths, maintenance and a little pocket-money.—And *Per Lord Ellenborough C. J.* (who reprobated this practice of the directors allotting children out, instead of providing for them in the manner pointed out by the act,) The adoption of a contract must be the act of a free agent; and it appears from the circumstances of the pauper's making no objection or agreement, conceiving that he had no discretion on the subject; and that he was obliged to accept the service as being under the control of others, that he cannot be considered as having adopted the act of his master.—No settlement was gained by this service. 9 E. R. 211.

R. v. Norton, H. 48. G. 3. A person, who was a deserter, A deserter hired himself for a year, and served the year under that hiring. And it was held by the court, that as it had been decided in the case of apprentices that they could not contract any relation with a second master without the consent of the first, by which they could gain a settlement under such second master: so in principle it could not make any difference, whether he were originally bound by any contract of apprenticeship, or by any other contract equally obligatory upon him, which disabled him from binding himself to serve a second master. That the king's officers might have at any time reclaimed him: he could not therefore be said to have been lawfully hired. And that such a one was not *sui juris* to contract in such manner. 9 E. R. 206.

Of the contract; as to its terms.

Shall be lawfully hired into any parish or town for one year] Upon the construction of these words arises the question, What shall be a hiring for a year? by which hiring, and service under it, a settlement may be gained.

In *Gregory Stoke v. Pitminster. M. 13 G.* The pauper was sent to by a relation, who told her that if she would live with her she should have her meat, drink, washing and lodging. The pauper went and lived with her four years as a servant. It was insisted that the living four years amounted to a good *retainer* for a year, and that the actual entry into the service, after being sent to and terms offered, was such an assent as amounted to a contract. But the court held that *there must be an actual contract*, where the servant is under no obligation to stay, and the contract must be *mutual* to bind the parties, and that this was no agreement, but an encouragement to the pauper that if she would live

There must be a contract.

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with the relation she would maintain her.
pl. 247.

Corfe Castle v. Weyhill. H. 33 G. 2. It appeared evidence of the pauper (the only witness produced), that about the year 1719 *Robert Pyke* 1 pauper (being then about eight years of age) in from charity, and gave him meat, drink, lodging while he continued with him, which was about of which the four last years were in the parish. That neither at nor before the time of the said taking the pauper into his family, nor at any time there any contract between the said parties, in respect of the pauper's service of the said Mr. Pyke, or his with him, or to any wages or other gratuity given him for the same: that during his continuance said P. he was employed in running of errands whatsoever the said P. or his servants thought him: that no wages were ever paid or given and that in the pauper's apprehension he was at the time aforesaid, at liberty to quit the said P. to turn him off, as either party should think fit. The sessions were of opinion that at such distance hiring for a year between the said P. and the father ought to be presumed, and therefore that the order of removal to *Weyhill*.—By the court

court said here was no settlement gained, for after the parish withdrew their allowance, the pauper was permitted to live at *Rickinghall* out of charity, without any contract, as between master and servant. 7 E. R. 373.

These cases were decided upon the ground, that it was proved in fact that there was no contract, and therefore there could arise no presumption that one had existed. But there are also cases in which the existence of a contract is not negatived by the evidence, but at the same time it also is not proved. In such cases the court will infer, under certain circumstances, that there was a contract, and the nature of it will also be inferred from the general character of the evidence.

Where a contract will be inferred.

St. James's in Poole v. Holy Trinity, in Wareham. H. 22 G. 3. *Elizabeth*, the wife of *James Sampson* and their five children, were removed from *St. James's in Poole* to *Holy Trinity, in Wareham*. The sessions confirmed the order, and stated, that it was proved that the pauper's husband was born in the parish of *Beer Regis*, and it was also proved by the pauper, that her husband was *abroad beyond sea*, and had been so for two years past, if alive. That to her knowledge he lived in the capacity of an ostler with *Mrs. Lee, in Holy Trinity in W.*, some years since deceased, for about two years, where she had seen him brew, but whether there was any thing relating to such service, was not proved; but that she had heard her husband say, he was settled in the parish of the *Holy Trinity in Wareham*.—By *L. Mansfield*. The sessions have drawn their conclusion, that he was hired, and I think they have done right. *Buller J.* Though the evidence is slight, there is nothing to contradict it. *Willes and Asburst* concurred. Both orders affirmed. *Cald.* 141. 2 Bott. 352. pl. 414.

If a person have lived with another as ostler for two years, and have been seen in menial service there, a yearly hiring will be presumed.

R. v. Lyth. T. 33 G. 3. Two justices removed *T. Carling* from *Whitby* to *Lyth*. The sessions confirmed the order, and stated the following case. On behalf of the respondents it was proved that the pauper was the legitimate son of *W. and M. Carling*, and was born in *Lyth*. On behalf of the appellants, in order to shew a derivative settlement in the pauper from his father in a third parish, it was proved that *W. Carling*, before his marriage, was a few days after *Martinmas 1731*, seen and known to be in the service of one *Campion in Barnby*, as a servant in husbandry, and was from time to time seen and known to act in that capacity with *Campion at Barnby*, for some time upwards of a year. Evidence was then offered on behalf of the appellants, to prove that *Campion*, who is long since dead, had declared in his lifetime that *W. Carling* had been hired with him for a year; but the sessions were of opinion that such evidence

If it be proved that a person was seen and known to be in the service of another as servant in husbandry for a year, a yearly hiring will be presumed.

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was not admissible. It was then also proposed to introduce evidence of declarations to the same effect by the person who is also dead, touching such hiring; but the court refused to admit such evidence. Whereupon the court being of opinion that there was no evidence of a hiring for a year, confirmed the order, subject to the opinion of the court upon the propriety of rejecting the evidence about the declarations of *Campion* and *W. Carling*; and the court, after rejecting such declarations, they have refused to infer the hiring from the fact of such declarations as above stated.—When this case was called on, the counsel addressing himself to the counsel who were to the case was drawn up in too loose a manner to give any solemn judgment upon it; for in fact the evidence was stated instead of facts: and the court was to draw inferences which the magistrates believe have done. But that, if the sessions wished to do otherwise, from the evidence stated relative to the case of *Carling*, they were at liberty to draw the conclusion, having been hired for a year in fact, the court was not in thinking that they might legally draw such an inference. He therefore thought this advice might be given to the magistrates without the necessity of entering any regular judgment upon this case as to the propriety of putting the parties to the expense of stating the

any other agreement until the *Christmas* following, when she went away; but a fortnight after *Michaelmas* 1793, she received 4l. for a year's wages then due; and for the remainder of the service from that time she received 18d. a-week, being the proportion of wages then due at the rate of 4l. *per ann.*—*L. Kenyon* Ch. J. At present the case is so imperfectly stated, that we cannot give any judgment upon it. A retrospective hiring certainly is not sufficient to confer a settlement; but as the pauper continued in the same service after the expiration of the first year, there was abundant ground for the justices to have presumed a hiring for a year from that time. However, as the fact is not stated one way or the other, the case must be sent back, where most probably the justices, after hearing the intimation of this court, will find the fact of a hiring for a year, which will put an end to the case. Case sent back to the sessions. 5 *T. R.* 668. 2 *Bent.* 357. *N.* 418.

R. v. Long Wharton. M. 34 G. 3. The pauper went in *March* to live at *D.* with Mrs. *Lowdham* to wait upon Mr. *Lowdham*, who was poorly. She continued there till the death of Mrs. *L.*, which happened two or three years after. She was seen during that time constantly acting as the servant of Mrs. *L.* The sessions were of opinion she gained a settlement at *D.*—And per Lord *Kenyon* C. J. There was sufficient evidence to warrant the justices in finding a hiring for a year at *D.* Though the pauper were at first only hired till the *Michaelmas* following, yet she continued in the same service for three years. 5 *T. R.* 447. 2 *Bent.* 356. *N.* 417.

Note.—It did not appear by any evidence, otherwise than by evidence of the pauper's declarations (she being at the time of removal a lunatic), that she had been hired from *March* till *Michaelmas*.

It comes next to be considered what contracts will amount to a hiring for a year; which may depend, 1st, Upon the stipulation as to time; 2d. Upon the stipulation as to wages.

M. 9 An. Dunsford v. Ridgwick. A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year in one continued entire service, but by several hirings.—By the court: It ought to be one entire contract and one entire service; the one is required by the statute as well as the other, for a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, if he continue a year, shall gain a settlement. One may hire by the day for charity; but there is danger of being chargeable on hiring such a person by the year. For such a term as

If a person be hired generally as to time, and serve for three years, a contract for a year will be implied.

The yearly hiring to be by one entire contract.

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it is not supposed a master would hire one, unless of body, and so a person not likely to become chargeable.
2 Salk. 535. 2 Bott. 250. pl. 313.

M. 12 An. Horsbam v. Shipley. A person was hired from May-day to Lady-day, then from Lady-day to May-day; the court were of opinion it did not gain a settlement; they said the hiring must be for a year. *Foley*, 13 tt. 235. pl. 291.

11 G. 3. *Great Salkeld v. Lowther.* The sessions state the following case: The pauper was hired to *William Thompson* in the parish of *Lowther*, from *Whitsuntide* to *Martinmas*; and again was hired to the said *Thompson*, for the succeeding year, from *Martinmas* to *Whitsuntide* following; and in consequence of those hirings served the said *William Thompson Hackthorpe* aforesaid for the complete year, without any other service; and received two half year's wages. It was further stated, that the usual custom of hiring servants in *umberland* is from half year to half year. And it was held, without argument, that no settlement could be gained under such a hiring and service. *B. S. C.* 674. tt. 238. pl. 296.

14 G. 2. *Wincaunton v. Crediton.* The pauper, a boy of seventeen, offered himself to serve *Samuel Williams* of *Crediton Horethorne*; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing,

Whether this conversation amounted to a hiring for a year, so as to gain a settlement? It was urged, that a hiring generally is hiring for a year, and that the law knows no other servant but one for a year; and that this has an express reference to *Hill's* service, which was for a year: On the contrary, it was argued, that here was no actual hiring at all; and none can arise, by implication, from the bare service alone: and that the reference to *Ned Hill's* service relates to *Hill's* work only, and not to his contract.—By *L. Mansfield* and the court: This man served three years, and received wages accordingly. But it is objected, that he was never hired at all. It is admitted, that if he were hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring; for *Hill* was a hired servant. And therefore it was adjudged, that the pauper thereby gained a settlement. *B. S. C. 502. 2 Bott. 197. pl. 256.*

M. 14 G. 3. Basingstoke v. Stockbridge. The pauper was hired to one *Michael Nicholas*, after this manner; the pauper asked *N.* if he wanted a boot catcher and driver, and *Nicholas* said, yes; the pauper replied he was willing to serve him, and *N.* bid him go into the yard and look after the horses; nothing else passed, and no term for which he was to serve mentioned. He went into the service, and continued in it for one year; and was, during that time, found by his master in meat, drink, and lodging there, but received no wages for such service. He was afterwards hired to *John Watts* of *Basingstoke* to be a chaise-driver, but no term was mentioned: He served him for a year there, being found by him in meat, drink, and lodging, but received no wages. He thought himself at liberty to leave either of these masters whenever he pleased. And several witnesses proved that the customary manner of engaging chaise-drivers is as the pauper deposed, and that the masters and drivers think themselves at liberty to part whenever they please. — *L. Mansfield* was absent. The other three judges were of opinion, that this was a sufficient hiring for a year.

Where no mention is made of wages or of time, and the service is for a year, a hiring is presumed.

A general indefinite hiring is a hiring for a year, unless something appears that may raise a presumption to the contrary. And nothing is here stated, which limits the hiring, or shews that it was meant to be for less than a year. *B. S. C. 759. 2 Bott. 199. pl. 260.*

M. 16 G. 3. Mangotsfield v. Bath Easton. The pauper was hired to *John Giles*, a barber in the parish of *St. John* in the town of *Devizes*, to serve him as a journeyman barber; who was to give him meat, drink, and lodging. In lieu of wages he was to have the *Christmas* boxes. No time was stipulated during which he should serve. Upon these terms he

Where one hires himself to another, and there is no stipulation as to time, but only as to meat, &c. and he serves for three

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ved with him for four years; but thought himself
y to leave his master when he thought proper. After
s he was hired to *John Bedford* an innkeeper at *Mangot*
to serve him in his stable; who was to find him mea
, washing, and lodging, but no wages, other than wha
ould receive as perquisites of the stable; and no tim
stipulated during which he should serve: And he appre
ed, that his master might have turned him off, or ho
t have gone away from him, at their pleasure. From
ime that the pauper began to serve the said *John Bedford*
e time at which he left him, was sixteen years. During
h time he left the said *John Bedford* several times at
leasure. But from the time of his first going into the
ce, he was with the said *John Bedford* two years and
rds without leaving him at all; and at the end of the
term of sixteen years, he was with him for three years
her without interruption. And this was admitted
out argument to be a settlement at *Mangotsfield*.
C. 823. 2 Bott. 201. pl. 262.

R. v. Worfield. H. 34 G. 3. *H. Phillips* went to live
A. Smith in *St. Leonard* in *Bridgenorth*, and served him
a year, but was not hired to him as she knows of.
le she lived with the said *Andrew Smith*, *John Jones* of
Leonard met with her, and taking her into his house,
her if she were hired again to *Smith*? she answered,

clusion, and state it as a fact whether or not there was a hiring for a year. The other judges concurring, both orders were quashed. 5 T. R. 506. 2 Bott. 208. pl. 268.

R. v. Macclesfield. H. 29 G. 3. The pauper *George Dean* being settled in *Wildboarclough*, was hired by *Francis Berwick*, late of *Macclesfield*, button maker, for 11 months, at 10 guineas wages; at the end thereof he and his master settled his wages for 11 months, and his master gave him a half-guinea over, saying, that he had been a good servant, and added, "You may as well stay on an end in your place; the place suits you, and you suit the place." The pauper's answer was, "Very well, Sir, I have no objection." And he continued to follow his master's business near three years. The pauper being at *Birmingham* with his master's cart, was taken ill, and stayed there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service, but the pauper kept no account himself. A few days after his return from *Birmingham* his master settled with him; he did not know in what manner, but supposed the money was right, and thought his wages would come to about four shillings a-week. By *L. Kenyon C. J.* It is clear that there must be either an express or an implied contract for a-year, in order to give the servant a settlement. An hiring for 11 months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though 11 months only were expressed, as in the case of *R. v. Milwich*, where there was a hiring for 11 months with an agreement to give in another month's service. Now in this case the first hiring for 11 months was not sufficient to confer a settlement; but when that time was elapsed, the master told the pauper that he might *as well stay on an end*; which, in that part of the country means an indefinite time. The second hiring therefore must be considered as a general hiring, which the law construes to be an hiring for a-year. As to this expression referring to the time for which the pauper was originally hired, it is too refined, it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under the second agreement, it negatives the idea that the parties contracted for another 11 months for the same definite sum which the pauper received under the first agreement; for it is stated that he received about four shillings a-week, which does not amount to the same apportionment of wages. *Asburß and Graft Js.* concurred. 3 T. R. 76. 2 Bott. 206. pl. 266.

R. v. Seaton and Beer. E. 24 G. 3. The pauper being settled in the parish of *Seaton and Beer*, went into the parish

Hiring for 11 months, and then on an end gains a settlement, the last being an indefinite hiring.

An indefinite hiring is to be considered as hiring for a year.

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adclift, and made an agreement with *Samuel Ponsford*,
 kept a public house there, as follows; "That *Ponsford*
 should give him one shilling a-week as he had given the
 other man or men, and the vails of the stables." Nothing
 said about the time of his service. At the end of the
 his mistress said to him, "You have been here a-year,
 I will pay you." To which the pauper answered, "It is
 no matter, I may stay with you another year." She said,
 "I will pay you well *Sampson*." He did stay another year, and then
 he asked what was due to him, being 5l. 4s.: he worked in
 the stables as an ostler, and neither at the time of making
 the first agreement, nor at the end of the first year, was any
 notice made, either by the mistress or the pauper, of a
 term for a year, or of the term for which he was to serve;
 the pauper apprehended that his master might have
 discharged him with him at any time, on giving reasonable notice.
 No notice was given at the time for which any such man
 as above referred to, had been at any time hired
 by *Ponsford*. The sessions confirmed the order of removal
 to *Ston* and *Beer*. *Willes J.* The first agreement was
 not binding, but the pauper was to receive wages like a former
 servant. I think the conversation at the end of the year was
 an agreement to serve another year, which makes it even
 stronger than the case of a general hiring. The case of
Stockbridge is decisive of the present question. *Asburst J.*

himself well, the next year he would give a full livery and wages; afterwards he lived a year and four months with *R.*, he lived in the whole with *F.* in *Wandsworth* one year and six months, and then parted from *Falconer*, and received from *Mr. Snelling*, *F.*'s partner, one guinea and a half; and there was no other contract for hiring appeared, or payment of money, than as above. The sessions quashed the order of removal from *Wandsworth* to *Putney*. — *Ch. J.* There is no doubt at this time of day to be made, but that in order to gain a settlement there must be a hiring for a year: The question is, Whether in point of construction of the fact returned in this order it does amount to a hiring for a year? It is not stated in this order that there was an express hiring; and it is objected that this cannot be considered as a hiring which imports a contract; for that nothing is said in this order of the assent of the boy. But the question is, Whether the contract afterwards is not an assent in point of fact, as much as if he had assented at the time? In the case of *New Windsor*, the order stated, that *A.* was hired in *August* 1731 to serve *B.* but was not hired for any determinate time, and that she was to have 5*l.* a-year wages; that she was to be one month with *B.* upon liking; and that *B.* might discharge her at a month's warning, on paying her a month's wages. This is all that was stated to prove a hiring for a year; for as to the service it is immaterial whether it was for one or several hirings. And by *Hardwicke Ch. J.* and the court. This did amount to a hiring for a year: and in that case was cited the case of *Lidney*: *A.* was hired for a quarter of a year, and if the servant and master liked one another, the servant was to continue for a year, and to have 3*l.* wages; that she continued for a year, and it was held a good settlement. Now these cases seem to be very strong, that it is to be considered as a hiring when the conditions are performed, for if he behaved well he was to have an additional reward, for he had a reward before, which was his meat, drink and lodging, and the nine shirts: therefore upon these authorities I think this is a hiring for a year within the statute; for if we go only according to the strict words, that a man must hire expressly for a year we shall defeat a great many settlements; and as this was a conditional hiring, and the condition performed, I think it is an absolute hiring for a year. — *Page J.* This before the promise was no hiring, only he was taken upon charity, and afterwards the master promised, that if he behaved well, he would do so and so: this seems to me not to be a hiring, but only a promise of reward. — *Chapple J.* This is certainly a hiring, but there is some doubt for how long: the act of parliament requires a hiring for a year. At first he is under

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contract, but has meat, drink and lodging, during his
 suance with *Falconer*; and *Falconer* tells him, that if
 yed a year and behaved well, the next year he would
 him a full livery and wages; now it seems to me the
 as at liberty whether he would stay or not, and there
 no obligation upon him to stay a year; he might if he
 , and if he did stay and behave well, then the next
 he contract was to take place; this is a contract by his
 g the year; but there is no service for a year under any
 ct; here was a hiring for a year: service may be under
 ent hirings, but it must be under some contract or
 cts, and for a year; therefore, as this contract did not
 ence till the next year, I am in a doubt whether this
 an hiring and service for a year, as the act requires.
 J. I apprehend that if there be a contract for a year,
 no matter whether the service is under the particular
 ct; for all the law requires is, that he shall be a hired
 t; and the reason is, because he shall be entitled to a
 ment, if any body will put such a confidence in him
 hire him; and the reason he is entitled to a settlement
 count of the service is, because of the benefit the pa-
 ceives by his labour. The cases are; if one be hired
 lf a year, and serve the half year, and afterwards be
 for a year, and serve half that year, it will be suffi-
 f he serve a year in the whole. — Page J. He was

a farm, that is considered as the same service, being under a contract, whereby he is bound for a year. The question then is, Whether this is a hiring for a year? I shall take it that he was there as a servant, and as if a service had been stated: if it be not to be considered in that way, the order must be sent down again to the sessions; this seems to be the common and usual way of hiring, a general retainer of a servant, though there is no particular time agreed, and a hiring for a year; then it is that *Falconer* told him that if he stayed a year and behaved well, the next year he would give him a full livery and wages; he comes and serves him. This must be considered as a hiring for a year, though not particularly said so, and he stayed with him above a year after this; so that it is a service for more than a year. In *R. v. Lidney*, there was no hiring for a year, only for a quarter; and if they liked, she was to continue for a year, and to have 3*l.* wages; so there was no express hiring for a year, but for a quarter only; and there the servant liking and continuing, it was determined that it was a hiring for a year. So in *R. v. Windfor*, it was no express hiring for a year, only hiring to serve *B.* and to have 5*l.* a-year wages. As here is an agreement to give a servant livery and wages, I do not know that it is necessary, in order to make it a good hiring, that the *quantum* of wages must be agreed; if the words "he would give him a livery and clothes" are a retainer, this is a good hiring for a year. Upon these cases of hiring we must consider these contracts, which do not specify any time; but where it is a hiring generally, it is to be understood as a hiring for a year. If this be a good hiring for a year, then there is sufficient to make it a settlement, for there appears to be a service for a year, taking it that he was there as a servant: I confess that is not clearly stated, but they have specified the livery and wages, and this looks like a service.—*Page J.* I am of the same opinion; a hiring generally is to be taken for a year, without mentioning the year particularly.—*Chapple J.* I think this is a hiring for a year; it was, if he stayed a year, he would give him a full livery and wages: here the year is specified: and he lived with him 16 months afterwards: so that this seems to be a plain contract, as the event did happen, that he did live with him for a year, so the hiring is good; as to the service, (it is not material that we should be informed when the first contract began or was determined, so that there clearly appears to be a service under some contract; the year shall commence from such a declaration of the master, and he served above a year after that.—*Wright J.* There is a doubt whether this be a hiring; but the question is, when it is to commence? Whether from the time of the discourse,

or

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or from the end of the year? and the whole of that, for there is no hiring for the first year of service at all unless it be under some hiring retainer: next year was the year after that, to stay and behave well, so that after the end of the next year he only served six months, and then a service for a year under a hiring; for instance, in *Windfor v. Wickham*, there were actual hirings. I own I have some difficulty to collect an order for the first year; there is no doubt of hiring upon the words, "next year he would have livery and wages;" but if there be no hiring, there is no service for the first year; and in the reverse, it being only six months after the first hiring, as at present advised, I think this is not a good settlement. Ch. J. If one be hired from *Michaelmas* to *Christmas*, and then be hired from *Christmas* to *Michaelmas*, and serve three quarters of that hiring for a year, this is a good settlement with the act, being hired for a year into the year. There was a sufficient service, as there had been a hiring. The legislature had two reasons for requiring a settlement: first, the benefit to the poor, hired for a year; secondly, the benefit to the parish, by actual service; and so in this case it is an actual hiring, and an actual service, for a year.

set him to driving his plow soon after he went, and he continued working at the farm about eight years, but received no wages or other reward except meat and clothes, and he and his said uncle wrought all the work of the farm during the last three or four years of that period; the pauper having some difference with his uncle a little before *May-day*, went to *Darlington* hiring, and there hired himself to Mr. *Lax*, of *Aircy Holme*, to be a servant in husbandry for one year, and served the same at *Aircy Holme* accordingly; shortly before the end of this service, he received a letter from his uncle, requesting his return to *Mordon*, and saying that if he would come and live with him *as before*, he could surely make it as good or better for him than a common service. During the year he was with Mr. *Lax*, his uncle had no regular hired servant, but employed a day-labourer to do such work for him as he did not like to do himself, and which the pauper used regularly year after year, as he grew in strength, to do for him; agreeable to his uncle's request he returned to *Mordon*, and lived with him there about three years, and then went with his uncle to *Stokesley*, and lived with him there about four years and a half, during all which time he performed the greatest part of the work of the farm, as his uncle at that time kept no other servant, and was an elderly infirm man; when the pauper returned to his uncle he made no agreement with him, either for what time or for what consideration he should serve him, but his uncle often promised him, if he would stay with him for his life, he would leave him his stock, crop and farm, as his own; his uncle's son having got a good place and being well provided for, his uncle of course found him meat and clothes, and used to give him a few shillings when he went from home, but nothing more; he left his uncle about *Martinmas*, and believed himself at liberty to leave him at any time: he soon after married, and has not gained any settlement since; when they parted they had no reckoning, and did not part friends. — *L. Kenyon Ch. J.* The argument addressed to us might have had a good effect if addressed to the quarter sessions, but it cannot have any weight here, because the facts stated in the special case negative any hiring; indeed that argument applies as well to the first as to the second service, and the justices have expressly said that there was no hiring during the first service: They also state that before the pauper returned to his uncle, the latter proposed to him, *to come and live with him as before*, that is in the same relation. This excludes the idea of any hiring for a year. I do not wish to break in upon those cases where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumstances may be presumed; and if the justices

in this case had found that there was a yearly hiring, it would have concluded the case; but here they have expressly found that the first service was not under any hiring, and that the second was *as before*, and we cannot contradict these facts, and introduce our own conjectures on the subject, in opposition to this finding. Order of sessions quashed. 6 T. 757. 2 Bott. 190. pl. 253.

If an emancipated person go to her father for a year, to do the offices of a servant, it is a good hiring, although it is agreed that she may earn what she can, by her own labour besides.

T. 27 G. 3. *Thorpe v. Chertsey*. The pauper was hired for a year to Mr. Shirley for 4l., and served that year in *Chertsey*: About three weeks before that service expired, her father, who was a day-labourer, in consequence of his wife's death came to the pauper, and applied to her to come and live with him to do the offices of a servant for a year in the parish of *Thorpe*, and offered her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got at Mr. Shirley's, her father was to make up the difference. She agreed to those terms, and came accordingly, and lived with her father at *Thorpe* for a year and upwards, during which time she got about one guinea and a half by keeping fowls, and two guineas and a half by going out charring, and taking in plain work; and at the end of the year, her father gave her 10s. as an additional recompence for her having gone to reap with him in the harvest month. — *Ashhurst J.* All that is necessary to give a settlement under these statutes is, that there should be a hiring for a year, and a service for a year. As to the hiring for a year, it is only necessary to read the words of the case to determine it; it states, that the pauper's father applied to her to come and live with him to *do the offices of a servant for a year* on certain terms, which she agreed to, and that she came accordingly and *lived with him in pursuance of that agreement for a year*. The objection is, that this is no hiring, because the sessions have not stated that the pauper lived as an hired servant; but there is no occasion for the sessions to state that expressly, if it sufficiently appear from the terms of the contract; now in the present case that does appear. Then it was objected that the contract was not binding; but that is not so, she was hired to do all the offices of a servant for a year: The terms of the contract are not such as would enable the pauper absolutely to leave her father's service, but only to do particular work for her own benefit; she was first bound to perform all this work, and consistently with that, she was at liberty to gain as much as she could earn by her own labour: This therefore was a good hiring for a year. And as to the service, the case states that the pauper lived with her father in pursuance of the agreement for a year: This is by no means like the

Pittminster

Pittminster case, for there, there was no hiring at all for any time. — *Grose J.* In order to gain a settlement by hiring and service, there must undoubtedly be a hiring for a year, and a service for a year. But in the hiring it is not necessary to use technical terms; the word "*hiring*" need not be stated on the case; it is sufficient if it appear that the servant agreed to serve, and the master to pay for that service, for a year. Then the circumstance of the father being the master of his own child will not vary the case; this was not a hiring generally by the father as long as he lived, but a hiring for a year expressly: the father offered the pauper certain terms, which it is stated she agreed to accept; then there was a contract between them for the hiring; according to the terms of this contract she was not at liberty to desert her father's service, she was only permitted to do what other work she could consistently with her father's service, and her earning besides that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated that the pauper lived with her father for a year in pursuance of that agreement. Both orders quashed. 2 T. R. 37. 2 Bott. 204. pl. 265.

M. 4 G. 3. *St. Peter's v. Holy Trinity in Dorchester.* The pauper *John Milwood* made an agreement with his stepfather, to live with his stepfather in his house, to work with him at his trade of a button-maker, and to be paid at the rate of one penny for every gross of buttons he should make, deducting at the rate of 5s. a-week for his meat, drink, washing, and lodging. Under this agreement he lived with him four or five years in the parish of *Holy Trinity*. — By *L. Mansfield*: This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed, hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case, that there was no hiring for a year, express or implied. B. S. C. 513. 1 Bl. Rep. 443. 2 Bott. 197. pl. 257.

Yet in *R. v. Alton*, 24 G. 3. (*post.*) It was held that where one made an agreement with his uncle to work in his trade by the piece, and to be paid by the piece for what he should earn, it was a general hiring, and equivalent to a hiring for a year.

M. 30 G. 3. *R. v. St. Matthew Ipswich.* *Edmund Stellers* and his wife were removed from *St. Nicholas* to *St. Matthew* both in *Ipswich*; which was confirmed at the sessions, subject to the opinion of the court on the following case: About five years ago the waiter belonging to *S. Ribbans*,

A person's agreeing to live with his stepfather, to work with him, and to be paid at a certain rate for what he should do, is not a general hiring for a year.

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kept an inn in *St. Matthew*, being ill, sent for a pauper, (who was then a single man, and settled in *Belas*) to assist him at the inn, where he stayed as he waiter about six months, and then went away. After being again taken ill, sent to the pauper to help which he did; and he continued in the inn as boot-catcher nineteen months, during which time he lodged there, and was to be satisfied by the gentlemen who came to the house. *Ribbands* knew of his being there after he came, but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of *Ribbands* till about *July* in the next year, when he went away, and the pauper continued there till the *Christmas* following, when *Ribbands* and the waiter having some dispute, *Ribbands* told him to go away, in which he asked for something for the time he had been there: *Ribbands* replied, he should not give him any thing, as he had made no agreement with him; but on being pressed again to consider his situation, he not having any money to help himself, *Ribbands* gave him two guineas, and the pauper then left the house. The pauper considered himself not as a servant to *Ribbands*, but as assistant to the waiter, and thought himself at liberty to go away when he pleased; he saw *Ribbands* sometimes, who, if a guest lent him his boots, told the pauper to get them, and at other

ation was the pauper at that time? The case states that came there *as helper to the waiter*; and there is nothing the case from whence we can infer that he was the servant of *Ribbands*. Therefore down to the time when the waiter went away, it is impossible to say that there was any agreement between *Ribbands* and the pauper. It is true that we cannot refer the last six months of the pauper's service to any thing but a contract with *Ribbands*; but that is not sufficient to give a settlement. If indeed the pauper had been before in *Ribbands's* service, and had then lived under yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with *Ribbands* either express or implied, until the last six months. The case of *R. v. Weyhill*, is not unlike this; there indeed the pauper was taken out of charity; but in that, as well as in the present case, the pauper was taken in such a situation as excludes *an hiring* by the master. In cases where the nature of the service implies an hiring, the court will raise such implication; but the nature of the service here implies the reverse. Small circumstances indeed have been held sufficient to raise a contract; as where the master told the pauper "to go into *Ned Hill's* place," it appearing that *N. Hill* had lived there as a yearly servant; but it is to be observed that in that case there was some conversation between the master and the servant respecting the contract, but here there was none. — Orders quashed.

T. R. 449. 2 *Bott.* 188. *pl.* 252.

King's Norton v. Camden. *T.* 13 & 14 *G.* 2. *Mary Calcutt* was hired for a year to spin yarn at eighteen-pence a stone, and was to provide herself with meat, drink, washing and lodging where she pleased. She spun for her master the whole year, and boarded and lodged at her master's, allowing 2s. a week for the same: But upon her examination she said, that by her contract she thought herself at liberty to play and be absent from her work as long as she pleased, only that she was not at liberty to work for any other master.—By the court; This case hath all the requisites of the statute, and will give a good settlement. For in fact here is a hiring and a price for a year. And what her apprehension was, or whether she was paid by the year, or by the quantity of her work, was immaterial. 2 *Str.* 1139. 2 *Seff. Caf.* 146. *B. S. C.* 1. 2 *Bott.* 209. *pl.* 269.

R. v. Birmingham. *H.* 20 *G.* 3. The case stated, That *Thomas Baker* was hired in the parish of *Birmingham*, by *John Jennings*, a wood-screw-maker, for a year, 'good earn good hire,' to work for him and no other master, to make screws at so much per gross: and this was all that passed on the hiring; That persons are often hired at *Birmingham* under the terms 'good earn good hire,' the meaning of

Hiring for a-year to spin yarn at so much per stone, will gain a settlement.

A hiring for a year to make screws at so much per gross, 'good earn good hire,' will gain a settlement.

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is, that their pay is to depend upon their work. *Baker* no wages; he was to have what he got. If he got nothing he was to have nothing. His master had no business but that of a screw-maker. He was to work in *Baker's* shop, and do no other work. He served a year at the hiring, and during the year sometimes lodged with his master, sometimes in another house in the parish. When he lodged with his master he paid him for his board and lodging. He sometimes absented himself to drink on any day, for a week or fortnight, and never asked his master's leave for such absence. His master, on his return, was angry, and checked him, but always received him again. During such absence, he never worked for his master or any other person. And it is generally understood at *Birmingham*, that persons hired to work in shops, under the above terms, occasionally absent themselves, but cannot work for any other master. The court considered that this was a good bargain and service. *Doug. 319. Cald. 77. 2 Bott. 217.*

v. Coltishall. E. 33 G. 3. At Lady-day 1785, the plaintiff being about 18 years of age, and a bricklayer's labourer, and settled at *Horstead*, was clubbed with *John Rolfe Coltishall* for three years, at 6s. per week the first year, the second year, and 8s. the third year; to board, lodge, wash for himself, he was to be taught the trade of

Newstead v. Holy Island. T. 10 G. 3. *Francis Downey* was hired at *Whitsuntide* 1767, to *Thomas Hill* at *Holy Island*, to serve him for a year from the said *Whitsuntide* to the *Whitsuntide* following, at certain wages. She entered upon the said service accordingly at *Whitsuntide* 1767, and continued therein till *Whitsuntide* 1768, when she received a year's wages from her master for such service. It was further stated, that it had been usual in the country, to hire servants from *Whitsuntide* to *Whitsuntide*, and that a hiring and service from *Whitsuntide* to *Whitsuntide* had always, by the contracting parties, been deemed a year's service; and agreeable thereto, the master had always paid the servant a full year's wages for such service, without any diminution thereof or addition thereto, and without making any distinction or difference, whether the space of time between the one *Whitsuntide* and the other consisted of more or less than 365 days.—It was argued that the space of time between *Whitsuntide* 1767 and *Whitsuntide* 1768, being less than a year (by 16 days), no settlement was gained at *Holy Island* by this hiring and service, being both of them incomplete; and that though the court have sometimes relaxed a little as to the service, yet they never relaxed as to the hiring.—But by the court; There is no case that proves the absolute necessity that the hiring should be for exactly 365 days. It is stated to be the usual way of hiring servants in that country, and such service always deemed to be a year's service. Parish officers are, by the 43 *Eliz.* to be appointed in *Easter* week, or within one month after *Easter* (which is a moveable feast): yet they are considered as executing the office a whole year, though it may fall short of 365 days.—And it was adjudged that this hiring and service were sufficient to gain a settlement. *B. S. C.* 669. 2 *Bott.* 237. *pl.* 295.

Hiring from *Whitsuntide* to *Whitsuntide* gains a settlement though there be less than 365 days in that period.

And in *R. v. Ulverstone.* E. 38 G. 3. The pauper, being legally settled in *Ulverstone*, and being an unmarried woman, was hired by *M. Hodge* of *Hawthhead*, to serve him from *Whitsuntide* 1796 to *Whitsuntide* 1797. She accordingly entered into his service on *Saturday* the 21st of *May* 1796, and continued to serve him in *Hawthhead* till the *Thursday* before the following *Whitsunday*, being 1st *June* 1797, when her master discharged her, she being pregnant of a bastard child, of which she was delivered on 1st *July* following. It was contended, that as in the above case of *Newstead v. Holy Island*, a hiring from *Whitsuntide* till *Whitsuntide*, although less than 365 days, was holden a sufficient hiring for a year, so that where it appears to have been the intent of the parties that the hiring should be according to such ecclesiastical division of the year, the parties ought to be

Although the service be ended before the following *Whitsunday*, but having continued for more than 365 days.

holden to the same term of service to gain a settlement, although it happened in this case to be more than 365 days; but as the pauper was discharged for a legal cause before *Whitsuntide* happened again, she could not gain a settlement.—*L. Kenyon Ch. J.* The case is too plain for argument. The only question is, Whether a service for more than 365 days is not a service for a year? The term ecclesiastical year is altogether new, and was never before applied to this subject:—And it was held that a settlement was gained. 7 *T. R.* 564. 2 *Bott.* 243. *pl.* 202.

Hiring three days after Michaelmas till the following Michaelmas gains no settlement

M. 1 G. Pepperbarrow v. Frensham. A person is hired the third of *October*, to serve till *Michaelmas* following; and at *Michaelmas* the master says, “stay two or three days and I will pay you.” It is said, that this was adjudged to be a settlement, because fraudulent; and if this were allowed, there would be no such thing as a settlement; for every person would hire a servant two or three days after the quarter day, purely to evade the statute *Cases of Settl.* 80. 10 *Mod.* 293. 2 *Bott.* 235. *pl.* 293.—But *Mr. Foley*, in reporting this case, says, that upon consideration, the court were all of opinion, that this hiring was not sufficient to gain a settlement; for it is not a hiring for a year: And if we once go out of the act, where must we stop? And in 1 *Str.* 83. this case is cited, and it is there said, that this was held to be no settlement.

H. 5 G. Coombe v. Westwoodhay. *Michaelmas* day was on *Thursday*, and a person was hired upon the *Saturday* following, to serve till *Michaelmas*: And it was held to be insufficient to gain a settlement, being not a hiring for a year. It was in this case observed, that there must first be a hiring, and then a service. and not *vice versa*, a service and then a hiring. 1 *Str.* 143. 2 *Bott.* 243. *pl.* 203.

So also *R. v. Westwell.* *T.* 3 *G.* 2. 2 *Bott.* 244. *pl.* 304.

Hiring at a statute fair held by custom, if for less than a year gains no settlement

E. 5 G. 2. South Cerney v. Coultborne. At *Northleach* are annually held two meetings for the hiring of servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after. The pauper was hired on the *Wednesday* after *Michaelmas* to serve till *Michaelmas* following; which he did. It was urged, that this being a hiring according to the course and custom of the country, was a sufficient settlement.—But by the court. This is no settlement upon the face of it. According to the stat. 3 *W. c.* 11. *f.* 7. there must be a hiring for a year, and that cannot be dispensed with. 1 *Seff. Cas.* 156. 2 *Bott.* 244. *pl.* 305.

So also in *Newton v. Gouldeborough, M.* 14 *G.* 2. In the *West-riding of Yorkshire.* *Abraham Greaves*, the pauper, on *Wednesday*, after *Martinmas* day, being the 14th day of *November*, and the day on which the first statute fair for the public

public hiring of servants was held at *Knareborough* in the said riding, was hired to serve from that time till *Martinmas* day following. Which service be performed accordingly. By the court: This was not a hiring for a year, so as thereby to gain a settlement. *B. S. C. 157. 2 Bott. 229. pl. 230.* But see (*post.*) *Navestock v. Standon Massey.*

And in *Leeds v. Hanwood. T. 20 G. 3.* At *Otley* in the county of *York*, there is a custom for servants to hire by the year at two different statute days; one on the *Friday* before old *Martinmas*, and the other on the *Friday* next after old *Martinmas*. At which latter statute day, they always hire till old *Martinmas* day following, which by the custom is considered as hiring for a year. Old *Martinmas* day, in 1775, was on a *Tuesday*. On the *Friday* following, being the second statute day, the pauper hired till old *Martinmas* day following, and served that time.—*L. Mansfield* was absent. The other three judges held this not to be a sufficient hiring for a year. And *Mr. J. Buller* said, there is no case where a hiring upon the face of it appears to be for less than a year, in which the court has held that a settlement was gained: And it would be dangerous to make a new precedent of that sort.—And the reporter takes notice of the case of *Syderstone*, and says, that in that case, a hiring on the 11th of *October* 1771, till old *Michaelmas* day 1772, was held to be a sufficient hiring, though there was nothing stated of any custom or usage. *Doug. 423. Cald. 100.*

R. v. Standon Massey, H. 49. G. 3. *Ongar* statute fair is held yearly on the day after *Old Michaelmas*, except when *Old Michaelmas* day falls upon a *Saturday*, and then, on the following *Monday*. At *Ongar* fair 1806, held on a *Monday*, which was two days after *Old Michaelmas* in that year, the pauper was hired to serve *W. G. from the fair-day till the Old Michaelmas* day following; and the court held without argument that no settlement could be gained under such a hiring, and that it was in no manner similar to a hiring from a moveable feast in one year, to the same moveable feast in another: and they said that the cases had gone far enough upon this subject. 10 *E. R. 576.*

Navestock v. Standon Massey. M. 13 G. 3. “*Thomas Fair* the pauper, at the statute fair at *Ongar* in the county of *Essex*, on the day next after old *Michaelmas* day, to wit, on the 11th of *October* 1733, hired himself to *Samuel Postford* of *Navestock* in the said county, to serve till the old *Michaelmas* day following; he entered upon the said service and continued it till the old *Michaelmas* day following; on which he received his wages, and quitted the said service: It appearing to be according to the custom

Hiring the day after *Michaelmas* day to the *Michaelmas* day following gains a settlement.

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tom and usage of the country to hire servants at the said
cute fair, namely, the day after old *Michaelmas* day, in
manner this pauper was hired, the opinion of this
art" (*viz.* of sessions) "is, that the pauper gained a
tlement in *Naveslock*, by the hiring and service above
ted; subject to the opinion of the court of king's bench,
the question, Whether the hiring as above stated is a
ficient hiring for a year to give the pauper a settle-
nt?" It was argued, that this was no hiring for a

It is a day short of a year. The acts of parliament
vely require a hiring for a year, and a serving for a
; and the custom and usage of the country cannot
ol a positive act of parliament.—Unto which it was
ered: That here appears to be a complete hiring for a
and service for a year. But if it should be admitted,
a day was wanting according to absolute rigid strictness
mputation, yet the express stating it to be according to
custom and usage of the country made it a sufficient
g for a year to give the pauper a settlement.—By *L.*
sfeld (unto which the rest of the court assented):
e must be a hiring for a year. If the hiring be for less
a year, it will not do, be the deficiency ever so little.
days or one day short of a year, are equally an objec-
to its being a hiring for a whole year. Hiring from a
eable feast to a moveable feast, according to the custom

only six pounds. On which they parted. The next day, *viz.* Oct. 11th, between two and three o'clock in the afternoon they were together at a public house in *Milham*, when *J. E.* asked him if he would take the wages offered him the day before, which he refused; but after some conversation *Dawson* hired himself to the said *J. E.* until *Michaelmas* following, at seven pounds wages; and entered his said master's service on the evening of that same day, 11th Oct. 1771, and staid in his service till 10th Oct. following, being *Michaelmas* 1772. On that day, his master not having finished his harvest, asked *Dawson* to stay and help him with his harvest; and *Dawson* thought himself at liberty to go away, yet he staid with his said master until the next day, to wit, 11th Oct. at noon; when, after dinner, he asked his master for his wages, who paid him seven pounds; and *Dawson* quitted his service, but did not ask or receive any recompence for his additional service. The court were clearly of opinion, that *Dawson* by this hiring and service gained a settlement at *Milham*.—*L. Mansfield* said, To be sure there must be a hiring for a year; and this is one. Though he was hired on the afternoon of the 11th, yet we shall say, that he was hired at twelve o'clock at night on the 10th: for it is settled that the law will not allow the fraction of a day. He served till the 10th, that is a year. If a man be born on the 10th, he is of age on the 9th.—*Aston* and *Willes* Js. concurred.—*Asburst* J. was absent. *Cald.* 19. 2 *Bott.* 239. l. 298.

M. 27 G. 3. *Beadlam v. Skiplam.* Two justices removed *Elizabeth* the wife of *William Ware*, from *Beadlam* to *Skiplam*. The sessions confirmed the order, and stated the following case:—That *Ware* the husband of the pauper at old *Martinmas* 1777, being then unmarried, hired himself for a year, and served that year in *Skiplam*: That on the next day after old *Martinmas* day, (*viz.*) on the 23d of November 1778, being then also unmarried, he hired himself to one *Barker* of *Newton*, to serve him from thenceforth until old *Martinmas* day following; and that he did accordingly enter into the service of the said *Barker* a few days after such hiring, and continued to serve him at *Newton* until the old *Martinmas* day following, on which day, about twelve o'clock at noon, he received his full wages, and left his master's house in the evening of the same day.—*Asburst* J. It is much to be lamented that there is such confusion in settlement cases; therefore whatever the late determinations may be, they ought to be adhered to; now the last case, namely, that of the *R. v. Syderstone*, seems to correspond with this in every point: Before that, a distinction had been made, as where the hiring and service had been expressly

If one be hired the day after *Martinmas* day till the *Martinmas* day following, *till* is inclusive, and it is a hiring for a year.

expressly found to be for a year according to the custom of the country; but in the last case, no such distinction taken; so here there is no custom stated; and "until" be taken to be *inclusive*. Therefore there was a hiring service for a year, for he entered into the service the day of one year, and served to the first instant of the 1 — *Buller J.* The only question is, Whether *Martinmas* day is to be taken *inclusive* or *exclusive*? The pauper's husband was hired the day after *Martinmas* day, to serve the *Martinmas* day following. From the moment of hiring he became the servant of the master, and continued in the service till *Martinmas* day; then does the "till" include the day? the former cases have decided it does; and if it only included a part of the day, as it is no fraction of a day, the service would be complete.—Both orders quashed. 1 *T. R.* 490. 2 *Bott.* pl. 300.

Hiring three days after Michaelmas till the Michaelmas following, gains no settlement;

although such contracts are stated to be fraudulent.

A pauper may be hired for less than a year to prevent his gaining a settlement.

Nor although there be a service for 365 days (being leap year.)

E. 27 G. 3. R. v. Mursley. William Coleman, the pauper was born at Redbourn, and three days after Michaelmas 1782 he was hired by J. Pollard of Mursley to serve his husbandry, until the Michaelmas following; he served the whole of that time, and received the whole of his wages. At the time of hiring, Pollard told him he should not be bound to Mursley. The sessions stated it as their opinion, that such transactions on the part of masters, are fraudulent to prevent servants gaining settlements; and adjudged that the pauper gained a settlement at Mursley by such hiring service, and confirmed the order, by which the pauper and his wife were removed from Redbourn to Mursley. But by the court: It is very clear that this is not a hiring for a year, as to gain a settlement. And as to the question of fact *Buller J.* said, that only arises where in truth there is hiring for a year, and a service for a year, and the pauper endeavour to colour it in order to prevent the settlement in such a case the court may say it is fraudulent; but a master may, if he please, hire a servant for less than a year, for the express purpose of preventing his gaining a settlement, Both orders quashed. 1 *T. R.* 694. 2 *Bott.* pl. 307.

E. 29 G. 3. R. v. Ackley. The pauper being unmarried on Saturday, 13th Oct. 1787, being three days after Michaelmas day, which was on a Wednesday, was hired by J. Clarke of Ackley, to serve him until the next Michaelmas. He accordingly went into such service, and continued there till Saturday the 11th Oct. 1788, being the day after Michaelmas day, which was on a Friday (it being leap year) and was paid his wages and went away. As this was a service for 365 days the sessions thought it gained a settlement.

ment in *Ackley*, and confirmed the order by which he and his wife were removed from *Bicester Market End* to *Ackley*. But the court were clearly of opinion that here was no hiring for a year; this was a hiring for two days short of a year; and though the court has been extremely indulgent with respect to *services*, they have been always strict with regard to hirings. Order of sessions reversed. 3 T. R. 250. 1 Bott. 242. pl. 301.

Ranton v. Haughton. T. 3 G. *John Evans* was hired with *Ralph Trubshaw* of *Haughton* from *Asb Wednesday* till *Christmas*, and served him that time. Then he went away from him, and stayed with his father in *Ranton* about a week. Then he returned to the said *T.* and was again hired with him for 11 months, and served him for 11 months. Then departed from the said *T.* and took his clothes with him, and was absent one week. Then he returned to the said *T.* and was hired with him for 11 months, and accordingly served him; and then left that service, and went to his father in *Ranton*, and stayed about one week. Then the said *John Evans* served one *John Sutton* of *Haughton* aforesaid for about three weeks, then returned to *Haughton* aforesaid, and stayed for about a week: and then returned to the said *John Sutton*, and hired with him for 11 months, and served with him within a fortnight or three weeks of the last 11 months, where, by agreement with the said *Sutton*, to avoid a settlement in the parish of *Haughton* aforesaid, he left him, took his clothes, and went into the parish of *Gnosall*, and there continued about a week; then returned to the said *Sutton*, and continued with him so long as to make up his service of the last 11 months; and three weeks before *Christmas*, the said *John Evans* hired himself again to the said *Sutton*, for another 11 months, and served him from that time till within three weeks of *Michaelmas* following, and then came away, and married. The question was, Whether these several hirings were sufficient to gain a settlement in the parish of *Haughton*?—*Parker Ch. J.* said, this was an apparent fraud, and different from all the other cases. *Pratt J.* said, I doubt we must take the law to be, that there must be a hiring for a year, and a service for a year: Here the sessions have found it specially, and there is neither hiring nor service for a year: And suppose a man that lives in a parish encumbered with poor, hires a servant for 11 months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there be any, the justices of the peace are judges of that. *Eyre J.* was of the same opinion of *Pratt J.* (*Powis J.* being absent). Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the court

Hiring for 11 months gains no settlement, although it was so limited for the purpose of avoiding gaining a settlement.

was,

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was, That these hirings and service in the parish were not sufficient to gain a settlement: such hirings as in this case do defeat settlement be a mischief, it is to be remedied by the legisla by the court, which is to judge on the law. *Fol.* 137. 1 *Str.* 83. 10 *Mod.* 392. 2 *Bott.* 2 T. 30 & 31 G. 2. *Milwich v. Greyton.* Th was hired at *Milwich* for 11 months for 4l. 10s. agreed between him and the master, that he sho month's service, beyond the 11 months. H 11 months, and also the given-in month, except days, and he could not say whether he served t but he received the whole 4l. 10s. wages. It v quash these orders; because this was not a hiri being only for 11 months; nor a service for a three days are wanting at the end of it. But th very clear, that this agreement was a manifest con for a year, notwithstanding the form of expr by the way they considered as an attempt to man's gaining a settlement, by a very pal The real question was no more than whether 11 12? There were no particular technical words make a hiring for a year. The substance of th is, to serve 12 months, for 4l. 10s. And v the variation of expression? Every contract to s

and besides his wages of 3*l.* One day in the season, he asked his master's leave to go a sheep-shearing: his master said, he was going out, and could not spare him that day; and in consequence thereof he did not go. The pauper, during the shearing season, returned frequently to his master's house, and did what work was to be done; and his master found him his board as often as he returned home.—The court were unanimously of opinion, that this was an exception out of the contract at the time of making it. They held it to be part of the contract, and not to be considered upon the foot of leave of absence given by the master; who being bound by the contract, could not refuse agreeing to it. The militia-man's case, they said, was a particular case. It was no more than the law would have implied. And it was determined that no settlement was obtained under this hiring. *Burr. Sett. Cas.* 791. 2 *Bott.* 217. *pl.* 277.

H. 31 *G.* 2. *Bishop's Hatfield v. Saundridge.* A man was hired from *Michaelmas* to *Michaelmas*, for 5*l.* wages, with liberty to let himself for the harvest month to any other person. He served till the harvest month, and then hired for that month, and received wages for it. During that month he brewed for his master, and lodged in his master's house at *Saunbridge* during the whole year; and served out the remainder of his time, and received his 5*l.* wages.—By the court: This is in effect only hiring for 11 months; and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop. *B. S. C.* 439. 2 *Bott.* 211. *pl.* 271.

Hiring for a year with liberty to be absent during the harvest month, gains no settlement.

R. v. Rusbulme. *M.* 49 *G.* 3. The pauper was hired for four years, with liberty to leave a week every year to see his friends. *Per Lord Ellenborough C. J.* Here is a hiring for a period of four years, with an exception of a week in every year, that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year minus one week in that year, and so on. 10 *E. R.* 325.

T. 13 *G.* 3. *Old Sodbury v. Westerleigh.* The pauper *William Ayliff* was hired for a year to *Anne Tyler* of *Old Sodbury* to serve her for a year, but at the same time he told her that he was in the militia, and he might be absent about a month in the year to attend on that duty, but that he would pay a man to serve in his place, or else he would make her an allowance out of his wages for the time he should be absent. He entered accordingly on his said service with the said *Anne Tyler*, and served her till the month of *May* following, and then joined and attended the militia for thirty days, and afterwards returned to his said service with *Anne Tyler*, and continued therein until the end of his year, and then made her

Hiring for a year with liberty to be absent a month in the militia, gains a settlement.

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ent of 8s. out of his wages for the time he was of his service.—*L. Mansfield* was not in court. *son* thought this case reconcileable to the cases of *cles*, and *R. v. Goodnestone* (*post*), and distinguishable from *Bishop's Hatfield*, which had been cited in argument. That absence for a particular time, with the master's not agreed for at the time of hiring, doth not dissolve the contract. But in the case of *Bishop's Hatfield* the original was with liberty to let himself for the harvest month to other person. This made a clear chasm in the original contract. It was plainly a hiring for less than a year. In the present case a man is hired for a year, to serve for a year. It mentions an event that might happen of his being called to attend his militia duty; and told his mistress, that should so happen, he would either pay a man to serve in his place, or make her an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the present service.—*Mr. J. Willes* premised, that settlement ought to be favoured; and that militia-men ought not to have any additional hardship put upon them if it can be avoided. However, he could not help thinking, that the case of *Bishop's Hatfield* was very like the present case, that the absence was as much part of the contract in the one case as in the other. If the mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present case the servant agreed either to find a substitute, or to abate his wages. Now this was at the election of the mistress, and this only,

continued three weeks of the month which was agreed to be served in lieu of his absence in the militia, leaving his master a fortnight before *Michaelmas*. He expressly swore, that he did not serve his master a year by one week. It was objected, that this was no hiring for a year, nor any service for a year, at *Chipping Norton*. — By *L. Mansfield* and the rest of the court: There is in this case a hiring for a year; and there is also a service for a year, if it were not for the month's absence in the militia. *A service must be for a continuation, without interruption, or adding together broken pieces to make up the year.* But here, the agreement, as to the absence for a month in the militia, was only what would have been implied, and what the master must have consented to. The year was completed five weeks before *Michaelmas*, and the additional month agreed for, was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like that of *R. v. Westerkirk*. The court ought to lean in favour of settlements; and the bad consequences would be very extensive, if we were to determine that a man shall lose his settlement by serving his country in the militia. We are all of opinion that this is a good settlement at *Chipping Norton*. *Doug. 376. Cald. 94. 2 Bott. 221. pl. 279.*

R. v. Over. T. 41. G. 3. The pauper let himself for a year, but being an *East India* pensioner, he was to have two days in each half year to himself, to go to receive his pension. — Lord *Kenyon* C. J. held that the pauper gained no settlement by this hiring. That the case of the militia-man went altogether upon the ground, that the leave of absence stipulated for, was no other than what the law would have compelled, without any such stipulation. It was part of the public service; that no conclusion, therefore, could be drawn from thence in support of this settlement. That here was an express reservation of four days in the year, during which the pauper was not to be under the control of the master. *1 E. R. 599.*

Ozelworth v. Wotton Underedge. T. 24 & 25 G. 2. William Hewett, settled in *Ozelworth*, agreed with *Thomas Palfor* of *Wotton Underedge*, cloth-worker, to serve him in the said business for three years, at so much a week. He was to work 12 hours in a day; and if more, was to have a penny for each hour over. Sixpence a week was to be retained as a deposit; which was to be repaid to *Hewett* if he performed the agreement, or if *Palfor* should discharge him before the end of the said term. And it was understood between them that *Palfor* might turn *Hewett* out of his service at any time during the term, paying him the six-

A stipulation by an *East India* pensioner to have two days in each half year to go and receive his pay, defeats his settlement.

Where the hiring is to serve three years, to work twelve hours a day, and if more to have a certain sum per hour.

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nces detained. *Hewett* worked under the agreement out six months; and then, being ill, absented himself a free months; and then returned, and was received for, and continued to work for him under the said agreement, till the time of his being removed by the order, about three quarters of a year after his return. During the whole time, *Hewett* lodged in the parish of *Wotton Underedge*, but not in *Palfor's* house.—By the court; This is a settlement at *Wotton Underedge*. Here is an actual hiring for three years, and a service under it for one year and a quarter. Besides the two justices removed him whilst he was actually in his master's service. *B.S.C.* 302. 2 *Bott.* 316. 374.

E. 31 G. 2. Macclesfield v. Sutton. *Joseph Borwer*, a bastard child, born at *Sutton*, and maintained by the overseers of *Sutton*, was hired, with the consent and direction of his mother, (he being then about eight years of age,) to *Macclesfield*, to work at a silk mill there, for the term of three years, 6d. a-week for the first year, 9d. a-week for the second year, and 13d. a-week for the third. The master was not to pay diet or lodging; and the service was to be only 11 hours on the six working days; and all the rest of the time, as well on *Sundays*, he was to be at his own liberty and his own cost. He continued three years in the said service; but during that time frequently absented himself from his work,

ring contributed to the child's maintenance during the whole three years. And the order adjudging it to be a settlement at *Macclesfield* was quashed. *B. S. C.* 458. *Bott.* 211. *pl.* 272.

T. 10 G. 3. St. Agnes v. Redruth. The father of the pauper contracted with one Mr. *Nankivell* (the pauper being then 15 or 16 years of age) for the pauper to work at the said Mr. *Nankivell's* stamps situate in the parish of *St. Agnes* (which stamps are mills, wherein several labourers, men and boys, are employed in cleansing and manufacturing tin,) for the year, at the yearly wages of 5*l.* In pursuance of which contract the pauper served the said Mr. *Nankivell*, at his aforesaid stamps, for the said year, by working therein daily, except holidays and *Sundays*, according to the custom of miners. And his father received his wages, as he had occasion for it. But during the said year, the said pauper did not drink, and lodge with his father in the said parish of *St. Agnes*, serving the said Mr. *Nankivell* at his stamps aforesaid, and in no other capacity, nor ever became a part of his master's family.—By the court: This was an entire contract for a year, without any exception contained in it; and the service was according to the custom of the country. The difference is where the exception is part of the contract, and where the contract is absolute: the question turns upon this distinction. In the case of *Macclesfield*, it was part of the original contract; here it is not so. And they were unanimous, that the pauper by this hiring and service gained settlement. *B. S. C.* 671. 2 *Bott.* 214. *pl.* 274.

R. v. Horwick. H. 49 G. 3. The pauper was hired as bleacher and crofter for a year, at 12*s.* a week; and served the year. The custom is for each bleacher to be directed by his master to get up a certain number of pieces a week, calculating at so many pieces a day for six days; there is no limit as to hours, and if the bleacher finish his work in less than the time appointed, the rest of the time is his own to do as he pleases; it was the custom of that house never to interfere with the workmen on *Sundays*, and it was contended that this was in effect an exception in the contract of *Sundays*. But Lord *Ellenborough* C. J. said that the master in his case had as much right to the service of the pauper for the whole year as the law would allow of. That there was a clear distinction between the present case and those of *R. v. Macclesfield*, *R. v. King'swinford*, and *R. v. N. Nibley*. That there was an express hiring for a year, and no express exception of any part of the year, and that implied exceptions in the times of service by the custom of the country, have been held not to break in upon general contracts of hiring for the year. 10 *E. R.* 489.

Where the exception is part of the contract, no settlement can be gained; it is otherwise where the contract is absolute.

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H. 12 G. 3. Buckland Denham v. Mells. The pauper, about 17 years of age, was hired by his father, to a clover of *Buckland Denham*, to serve him as a shearmen for five years, and was to work shearmen's hours only (which are certain): It was understood that he should be at his own liberty at all other times. The master was to teach him the business of a shearmen. He was to have, for the first half year, the weekly wages of 3s. and to be advanced 6d. weekly every succeeding half year; and was to find himself meat, drink, washing and lodging. He served his master as a shearmen during the said term, according to the said agreement; working the same hours as his master's other shearmen did. — By the court: This is not a good hiring for a year; because there is an exception in it, that the pauper is to work shearmen's hours only, and to be at his own liberty at all other times. But if the contract be an absolute contract for a year, the not working on *Sundays* or holidays, it be the custom of the country not to work on those days, it might not hinder the gaining of a settlement. *B. S. C. 694. Bott. 214. pl. 275.*

E. 31. G. 3. R. v. King'swinford. On an appeal against an order of removal of *J. Lockwood* from *King'swinford* to *Birmingham*, the sessions quashed the order, and stated the following case: The pauper being settled at *Wakefield*, agreed with *W. Bullock* to serve him as an artificer in the art of a

and coercion of the master during the whole time. 4 T. R. 219. 2 Bott. 225. pl. 283.

R. v. North Nibley. M. 33 G. 3. *J. Howell* was removed from *Wotton Underedge* to *North Nibley* in *Gloucestershire*. The sessions confirmed the order, subject to the opinion of the court on the following case: The pauper was born at *North Nibley*, and was hired by Mr. Smith of *Wotton Underedge*, for five years, as a colt-shearman, to work 12 hours each day. He neither boarded nor lodged with his master, but served him the whole time, and received his wages, and lodged in *Wotton Underedge* all the time. The court said, that the case of *R. v. Kingwinford* had decided the present question, and that such hiring and service did not gain a settlement. 5 T. R. 21. 2 Bott. 226. pl. 285.

Hiring for five years to work 12 hours each day, will not gain a settlement.

Of weekly wages.

Bedfield v. Dedham. M. 10 G. 3. The pauper *Samuel Bolton* was hired to *John Mason* of *Dedham*, to serve him in the business of a plumber and glazier, at the wages of 6s. a week, board, lodging and washing, summer and winter. He served under that agreement for 11 months, when his master having taken an apprentice, informed him that he must lodge out of his house. Upon which the pauper demanded 6d. a week more, alledging that he would otherwise quit the service. He continued to receive the additional 6d. a week till after the expiration of the year. And the pauper by the aforesaid hiring apprehended he was bound to stay with his master a year. — By *L. Mansfield* and the court. There must be a hiring for a year, either in law or in express words. The words do not express it; and here is a circumstance stated, which destroys the presumption of its being a hiring for a year; viz. that the servant demanded an additional 6d. per week, alleging that he would otherwise quit the service, and the master complying with this demand, shews that neither of them at that time thought the contract originally made between them was binding for a year. B. S. C. 653. 2 Bott. 198. pl. 258.

Wages at 6s. a week, summer and winter.

In this case however of *Bedfield v. Dedham*, very great stress was laid upon the fact of the pauper's demanding sixpence a week more, and alledging that he would, otherwise, quit the service. It was also said by Mr. *J. Aston*, that the words "summer and winter" only imported that the wages should always continue the same, and not be varied according to the seasons.

B. 28 G. 3. *R. v. Newton Toney.* *William Slater* and his wife and children were removed from *Harbridge* to *Newton Toney*. The sessions confirmed the order, and stated the following case: — That *Slater* went into the parish of *Newton Toney*, to one *Postans*, a publican there, who had before em-

A hiring at 6s much per week is not a general hiring.

ployed him three times to go into *Shropshire* with some hounds; and on his return from the last journey he agreed to live with *Poftans* as ostler, at 4s. 6d. *per week*, and continued with him as ostler for one year and a half, and then went away. Before his departure, on demanding his wages, *Poftans* alleged, that as he had received *vails*, 4s. 6d. a-week would be too much; whereupon he agreed to accept after the rate of 10l. a-year, in lieu of 4s. 6d. *per week*. He then left his service, and lived elsewhere for five or six months, when he returned to *Newton Toney*, and agreed with *Poftans* to serve him again as his ostler, as he had done before, at 4s. *per week*, which was about 10l. a-year, and which he received when he asked for it: under the latter agreement he lived one year and a half, but thought himself as a weekly servant, and at liberty to leave his service at any time.—*Ashhurst J.* The case of *R. v. Dedham* above is much stronger than this. It is impossible to distinguish the two cases upon principle: here the pauper hired himself as an ostler at 4s. 6d. *per week*, but that cannot be considered as a general hiring; and if either party had chosen to dissolve the contract before the end of the year, no action could have been maintained by the other.—*Buller J.* This case is not so strong as that of *R. v. Dedham*, for there the expressions *summer* and *winter* shewed that the party had it in contemplation to continue a year in the service. Here the hiring is merely at so much *per week*: now, if there be anything in the contract to shew that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only weekly hiring, and this hiring is of that kind.—*Grose J.* Considering the situation of the pauper, and what passed at the time of entering into this contract, this appears not to be a hiring for a year: the pauper was hired in the character of an ostler at 4s. 6d. *per week*; now that circumstance alone shews that he was not likely to continue a year.—Besides that, it appears that he actually left his service in the middle of the year, which satisfies me that it was not intended by the parties to be a hiring for a year. Rule absolute. 2 T. R. 453. 2 Bott. 223. pl. 282.

T. 28 G. 3. *R. v. Odibam.* The pauper went to live with one *Rhodes*, of *St. Mary, Lambeth*, livery stable-keeper, and post chaise letter, as under ostler, at 9s. *per week*, without fixing any time for the expiration of such service. Some time after he had been there, a post-boy went away, and the pauper was by his master turned over to take his place at 3s. *per week*, and the money he could get from the persons he drove. He remained in such service upwards of two years, and

But if there be any thing in the contract to shew that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring.

and more than one in the last employment as post-boy; during the whole time he found himself victuals, and lodged in a loft belonging to his master in the yard. Some time after he left the said service he returned to it again, when *Rhodes* told him he might go to work, and then remained one year under that agreement. Some time after he left the service, he returned to it a third time, in or about *February*, as an odd man, without wages, and continued under this last agreement till three weeks after *Christmas*: when he first went, he saw and had some conversation with the head-offler, and was some days about the yard before he entered into any service; he then asked his master *Rhodes* for his place, who told him he might have it. The pauper and his wife were removed from *Odiham* to *Lambeth*; which the sessions quashed on appeal. This case was given up as having been determined in the above case of *R. v. Newton Toney*. 2 T. R. 622. 2 Bott. 224 (n.)

R. v. Hanbury. T. 42 G. 3. The pauper agreed to work with one *Saunders*, as a blacksmith, at 3s. 6d. per week, to part on a week's notice by either party. The pauper continued to serve for six years, when S. died. And it was said by Lord *Ellenborough* C. J. that this case was decided by those of *Dedham*, *Bradninch*, and *Newton Toney*. That in the first, Lord *Mansfield* said that all the cases required a hiring for a year, but that that was only at so much a week. In the second, he observed that the pauper was under no obligation to serve a year, and unless that be so, there can be no settlement gained; and that *R. v. Hampreston* turned upon the circumstance of a month's notice to quit being required. But here the contract was determinable at a week's notice: and that here was no ground for presuming a general hiring; it appearing expressly what the original agreement was, which negatived a hiring for a year. 7 E. R. 423. 2 Bott. 231. pl. 290.

R. v. Pucklechurch. T. 44 G. 3. The pauper, after two previous hirings, each being for a less period than a year, again agreed with his master *to live*, the master finding him board and lodging, and paying him 2s. 6d. per week; no time was mentioned by either party.—Per Lord *Ellenborough* C. J. If nothing be said as to the term of the service but that the servant shall have weekly pay, it must *prima facie* be understood that the parties intended a weekly hiring and service. But circumstances may shew a different intent. Here in the first instance the hiring was for a specific term of eight weeks; the second hiring was for a definite time short of a year. No time was mentioned at the third hiring, but it was a hiring at weekly wages. Then it falls within the cases of *Dedham*, *Bradninch*, and *Newton Toney*, where

A hiring to work at 3s. 6d. per week, and continuing for six years, does not gain a settlement.

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ing at weekly wages has been holden to be a weekly hiring. If an indefinite hiring were stated on a record, and being shewn to control it, it will be deemed a hiring for a year; but that is in the absence of any circumstance from whence a different intent is to be collected. The other judges agreed. Afterwards Lord *Ellenborough* added, that he hoped it would be understood in future that where a hiring was said about time, but a reservation of weekly wages, it was only a weekly hiring. 5 *E.R.* 382. 2 *Bott.* 233. 21.

M. 16 G. 3. *Cavendish v. Clare.* The pauper, being a tneyman miller, at *Michaelmas* 1768, let himself to *E. S.* the month, at the wages of 8s. a-month, and was at liberty to depart from his said service at a month's wages or month's warning. At the time of hiring it was agreed between the pauper and the said *E. S.*, that if he continued her service till harvest time, he should be at liberty during harvest month, to let himself to any other person for the next month. He continued five years in the service of said *E. S.*, and during that time constantly let himself to the person or other for the harvest, and received the common wages of 8s. from his said mistress for the harvest month in each year; and paid her one moiety of the wages he received at such harvest, annually, and during his service with said mistress; but generally, at the end of every month, sometimes weekly, received his wages of 8s. a month or that proportion. And he considered himself as a monthly tenant, and at liberty to leave his mistress at the end of any month, on payment of a month's wages, or giving a month's

wages be to be paid by the week or the year cannot make any alteration in the duration of the service if the contract were for a year. This, therefore, was a contract for a year, at so much a-week, with liberty to quit at any time, except seed, hay, or harvest time, on giving a fortnight's notice; but the power of giving notice makes no difference, for it has been held that an agreement to leave the service on giving a month's warning did not defeat the settlement.—The other judges concurred. Both orders quashed. 4 T. R. 245. 2 Bott. 226. pl. 284.

E. 33 G. 3. R. v. Hampreston. On an appeal against an order of removal from *Gillingham* to *Hampreston* in *Dorsetshire*, the session confirmed the order, and stated the following case: The pauper *W. Gray* being settled at *Hampreston* went to one *S. Hannam* a miller of *Gillingham*, and agreed to serve him for 3s. 9d. per week; he considered himself obliged to serve his master on *Sundays* as well as other days; and accordingly served on *Sundays*. "They had a liberty of parting on a month's notice on either side." He received 1s. as earnest to bind the bargain. There was no mention of time, or for how long he should serve. He continued under this contract about two years and a half, residing in *Gillingham* in the house of his master. He then went to *Tisbury* to be inoculated, where he remained two months. *Hannam* then sent for him, and he was hired again by him at the rate of 4s. per week. He continued to live with *Hannam* under the last contract for two years and a half, during which time he resided in his master's house in *Gillingham*. — *L. Kenyon Ch. J.* It is admitted, that since the case of *R. v. New Windsor*, the circumstance of the parties having it in their power to determine the service on giving notice will not defeat the settlement, where there is a contract for a year, and a year's service under it. Neither could it be disputed by the counsel, who argued in support of the order of sessions, that a general hiring is not a hiring for a year. In each of the cases cited (a) there was something to shew that the parties did not intend that it should be a general hiring; one was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might have been immediately determined. But whenever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, there the hiring must be understood to be a hiring for a year. If this were not a general hiring, those who disputed that proposition should

Hiring at so much per week, conditionally to part on giving a month's notice, is a general hiring.

(a) *R. v. Newton Toney, R. v. Odiham, R. v. Dedham, R. v. Birdbrooke, and R. v. Bradninch.*

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pointed out for what time it was to continue; and it has been contended to be for a month, or a month to a week, but there is no foundation for either; for that were so, the pauper might have left the service at the end of the first month, or of the five weeks, without giving notice at all; but there is no pretence for that; for by terms of the contract he was to give a month's notice before he could determine it. And this is distinguishable in *R. v. Bradninch*, for there was a hiring for a stipulated time less than a year. In this case, independent of the first contract, the parties met again after an absence, and the pauper was a second time hired at 4s. per week, the pauper acting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year, and the pauper having served more than a year under it in *Gillingham*, required a settlement there.—*Ashburst, Buller, and Grose, Js.* occurred. Order of sessions quashed. 5 T. R. 205. 10tt. 207. pl. 267.

D. 8 G. 2. *New Windsor v. Chipping Wycombe.* *Diana Stokes* was hired to Colonel *Merick* at *Thorpe*; and was to go on her service a month upon liking; and was to have 5l. per year wages; but was to go away from her said service on a month's wages, or a month's warning on either side. She continued near two years in her said service, without any new hiring, and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year at *Thorpe*: And she gained a settlement there. S. C. 19. 2 Bott. 248. pl. 309. See *Wandsworth v. Put-*
(ante) as to going upon liking.

wages. She entered into the said service, and continued therein one whole year, and received the said wages of 3l. It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she consequently could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year: since the master and she did like one another, and a year's service was actually performed under it. *B. S. C. 1. 2 Bott. 247. pl. 308.*

H. 22 G. 2. St. Ebbs v. Holywell. Two justices remove *Caleb Guy* from *Holywell* to *St. Ebbs*. And the sessions upon appeal confirm that order. The case was, the said *Caleb Guy* was hired to *Thomas White* of *Holywell* thus: He was to come for a quarter of a year, and to have after the rate of 20s. a year: and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any further or other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in *Holywell*, by this hiring and service: for a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to shew cause. But no cause was shewed. And the rule was made absolute. *B. S. C. 289. 2 Bott. 249. pl. 311.*

M. 25 G. 2. Ilam v. Tutbury. *Rowe Port* of the parish of *Ilam*, esquire, hearing that the pauper was a likely boy to serve him as his postillion, sent to the pauper's father to have him upon liking. After the pauper had served Mr. *Port* eight weeks on liking, Mr. *Port* hired him for a year, to commence from the beginning of the said eight weeks. He served Mr. *Port* in the said parish of *Ilam* a year, (including the eight weeks) and ten days, and no longer.—By *Lee Ch. J.* This case differs from all the former cases. In *Lidney* and *Stroud* the first hiring was conditional, for a quarter of a year upon liking; and if they did like each other, then to continue for a year: Yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *New Windsor* and *Chipping Wycombe* it was uncertain, till the end of the year, whether the hiring would be for a year, yet happening so in event, it was held good. In the present case the commencement of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past. Mr. *J. Foster* thought the cases of *Lidney* and *Stroud*, and of *Chipping Wycombe* and *New Windsor*, had carried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: But both these were hirings for a year, previous to the

Hiring for a year, part of which was the post, gains no settlement.

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service; and the conditions were performed. He observed also, that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties. And the court were of opinion, that the pauper by virtue of hiring gained no settlement in *Ilam*. *B. S. C.* 304. *Bott.* 245. *pl.* 306.

E. 17 *G.* 3. *Chestnut v. Hoddesdon.* *Anne Hickley* went to *Mr. Vear's* at *Hoddesdon* to inquire for a place, where she continued for about three weeks on liking, without any wages being talked of, when her aunt came and let her for a year for 4*l.* to commence from the day she first came into service: under which hiring she served a year, including three weeks, and received her whole year's wages; that when her aunt came no agreement of any sort was made, and she thought herself at liberty to go to any other place, where one had offered.—It was acknowledged that after the decision of *R. v. Ilam*, it could not be maintained that a retrospective hiring was good. *Cald.* 23. 2 *Bott.* 245: (*n.*) Also in *R. v. Marton*, *E.* 31 *G.* 3. The pauper when she was about 18 or 19 years of age, went into the service of *Fisher* in *Marton*, and stayed about a fortnight or three weeks without any hiring or agreement of any kind being made between them. The pauper's father then made an agreement with *Fisher* for the pauper to serve him for a year at 6*d.* per week. The time he had then served was to

deemed a sufficient hiring, and not what should be sufficient service under such hiring? [And see *Wandsworth v. Putney*, (*ante*)]

We proceed therefore to the case of the inhabitants of *South Moulton, H. 10 W.* A maid servant was hired for half a year; which time she served: And then was hired for a year, and served half of that. — *Rokeby, Terton, and Gould* (*Holt Ch. J.* being absent) held it to be a settlement, because the statute designed only that the party should serve a year. 1 *L. Raym.* 426.

A settlement may be gained under a hiring for half a year and a hiring for a whole year.

So likewise in the case of *Overton v. Steventon, H. 10 W.* which was thus: *Bridget Bayly* on or about the said 25th day of *March* contracted with one *John Orpwood* of *Steventon*, for the wages of 20s. to serve him from the said 25th day of *March* 1697, till *Michaelmas* then next following; which time she served accordingly. And at the said *Michaelmas*, the said *Orpwood* contracted with the said *Bridget*, from the said *Michaelmas* for one year ensuing, for the wages of 30s. And the said *Bridget*, according to the last mentioned contract, remained with the said *Orpwood* till some time in the month of *April* 1698, in which month, by the mutual consent of the said *Bridget* and *Orpwood*, she left her service, and he paid her the proportion of wages then due. The sessions thinking the above mentioned hiring and service aforesaid, continuing for the time of more than one whole year, to be a good settlement, confirmed the order of the two justices for sending her to *Steventon*. — And of this opinion was the court: And the orders were confirmed. *B. S. C.* 549. 2 *Bott.* 250. pl. 312.

E. 1 G. Brightwell v. Westhallam. There was a hiring and service from three weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and service for eleven months. — The *Ch. J.* said, if there were a service for a year, on a hiring from week to week, and then a hiring for a year, and serving for forty days (*a*), that he should adjudge that a settlement. The reason is, because till the last statute was made, a hiring for a year, and 40 days' service, made a settlement; in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work. So forty days is a good settlement to an apprentice, in respect to his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by 40 days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring

So, where there is a hiring from three weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year and service for eleven months after second hiring.

(*a*) But in the case of *R. v. Adson*, (*post*, this same head,) it was determined, that 40 days service under such yearly hiring, was not necessary to gain a settlement.

So, where there is a hiring from Christmas to Michaelmas, and then hiring for a year, and a service till Midsummer under the second hiring.

service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes. 1 *Seff. C.* 87. *Foley*, 143. 2 *Bott.* 251. *pl.* 315.

M. 1 G. 2. *R. v. Aynhoe*. The pauper was hired in *Bicefter* from *Christmas* to *Michaelmas*, and served till *Michaelmas*; then was hired for a year, and served till *Midsummer*. And this was adjudged to gain a settlement in *Bicefter*. There were cited for it the cases of *Overton v. Steventon*, and of *Brightwell v. Westhallam* above.—Lord Ch. J. *Raymond* said, 'The case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was made previous to the hiring for a year. The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion. 2 *Seff. C.* 119. *Foley*, 144. 2 *Bott.* 253. *pl.* 317.

So, where there is a hiring from Christmas to Whitsuntide and from Whitsuntide for a year, and service till the beginning of the March after the Christmas.

H. 6 G. 3. *Underbarrow and Bradley-Field v. Croftbwaite and Lythe*. The pauper *Anne Kellett* hired herself at *Christmas* to *John Thompson* of *Croftbwaite* and *Lythe* till *Whitsuntide* then next following, which time she served. At the same *Whitsuntide* she hired herself to the said *John Thompson* for one year, and continued in the said service till the beginning of *March* following, when she and her master parted by consent. The sessions were of opinion, that the said *Anne Kellett* gained no settlement by the said service in *Croftbwaite* and *Lythe*; The sessions quashed the order of removal. It was moved to quash the order of sessions, for that there was, upon the state of the facts, a hiring for a year and a service for a year, when both were coupled together; though indeed the first hiring was for less than a year, and the second service was likewise for less than a year. On shewing cause it was urged, that the two leading cases above, of *South Moulton* and of *Overton v. Steventon*, were determined upon facts prior to the explanatory statute of the 8 & 9 *W.* before which statute a hiring for a year and a service for forty days gained a settlement. And it was observed, that in the last case of *Aynhoe*, L. *Raymond* and also Mr. J. *Page* declared, that if it had been then *res integra*, they should have adjudged it to be no settlement in *Bicefter*: And now it appears to be so; as the two supposed precedents were no precedents at all, being prior to the statute of the 8 & 9 *W.*—By the court: The authority of these cases will be just the same, whether the facts were prior to the statute or not: Because the court determined them as upon facts subsequent to the statute. And there

having been many determinations the other way, the court were unanimously of opinion, that for the fake of certainty it is beft to adhere to fettled determinations. Though there might be room for great doubt upon this point, if the matter were again open, yet the rule *stare decifis* is always proper, and efpecially in thefe cafes of fettlements. And the order of felfions was quafhed, and the original order affirmed. *B. S. C. 545. 2 Bott. 259. pl. 322.* — Note; Upon fearching the records it hath appeared, that the cafe of *Bridget Bayly* was after the explanatory ftatute of the 8 & 9 *W.* and the miftake did arife from the errors of the feveral reporters of that cafe, as to the particular times of her hiring and fervice. The other cafe, *viz.* of *South Moulton*, is not to be found upon the file: And the report thereof in *L. Raymond* is fo very imperfect, that nothing can with certainty be concluded from it. Sir *James Burrow* takes notice, that it is not impoffible that this cafe of *South Moulton* may be the very fame with that of *Overton*. Which conjefture feems to be fupported by this obfervation, that the reporters of both the cafes exprefs that *Holt Ch. J.* was abfent. And there was no other determination in that term, according to the reports thereof in *L. Raymond* wherein it doth not exprefsly appear that *Holt. Ch. J.* was prefent.

R. v. Adfon. H. 33 G. 3. The pauper was hired in *Church Stow* eight days after old *Michaelmas* 1786 to the old *Michaelmas* following, and continued in his mafter's fervice till the day after old *Michaelmas* day 1787, when he was hired by his mafter till the *Michaelmas* following, and under that hiring he only ferved 10 days. The felfions thought that the fecond hiring was a hiring for a year, but that the pauper had gained no fettlement under it, as he had not ferved forty days fubfequent to that hiring. This cafe was argued in *Michaelmas* term laft, when only *L. Kenyon C. J.* and *Grofe J.* were prefent; when *L. Kenyon* was of opinion that a fettlement was gained by the hiring and fervice ftated in the cafe: but *Grofe J.* being of a different opinion, it flood over for further confideration; and now *L. Kenyon* faid, that they were both of opinion that the pauper gained a fettlement in *Church Stow.* 5 *T. R. 98. 2 Bott. 268. pl. 331.*

So a hiring for lefs than a year and then a hiring for a year, but not 40 days fervice under the yearly hiring, will gain a fettlement.

H. 20 G. 3. Ulverfton v. Underbarrow and Bradley-Field. *Thomasin Hallhead*, being fettled in the township of *Underbarrow* and *Bradley-Field* by a derivative fettlement from her father, was hired for a year in the faid township of *Underbarrow* and *Bradley-Field*, from *Whitfuntide* 1770 to *Whitfuntide* 1771, to one *Burrow*, for the yearly wages of 18*s.* where fhe lived with him under this hiring till the 12th of *May*, being old *May-day* 1771: That her mafter then re-

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So, a hiring for a year at 18*s.* wages, and then hiring for another year at 25*s.* wages, and fervice for part of the lafter year, is a continuance of the fame fer-

Poor. (Settlement.) [Se

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ser- moving to a new farm in the township of *Strickland*
carried her with him, where she served seven
completed her year, and received her wages.
again hired herself to the same master for another
Whitsuntide 1771 to *Whitsuntide* 1772, for the wages
and under this last hiring she continued with him
Roger from *Whitsuntide* 1771, till *Candlemas* follow-
by mutual consent she quitted her service, and
wages up to that time.—By *L. Mansfield Ch.*
all very clear that this was a continuance of the
with an increase of wages.—And that a settle-
gained in *Strickland Roger*. *Doug.* 296. *Cald.*
262. *pl.* 326.

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85. *E. 22 G. 3. R. v. Bagworth.* *Sarah Ward* v
from *Bagworth* to *Ratby*. The sessions qual-
and stated specially, That nine weeks before old
1780, the pauper was hired by *William Hunt*
one week at 2s. 6d. wages, and continued to
house by the week till old *Michaelmas*, and
wages every week. That during that time she
herself at liberty to have quitted her service at
any one week, and to have hired herself to
person. That at the said old *Michaelmas* 1780
hired for a year from that time, and served till a
night before the following old *Michaelmas*, when

to the house of her aunt; and soon afterwards went to *Winford*, and worked with one *Nicholas Walker* cloth-worker, in the business of burling cloths, by a weekly hiring or agreement at the weekly wages of 1s. 6d. each week in the winter, and 2s. each week in summer. On *Saturday* in each week, *Nicholas Walker*, when he paid the pauper her wages for that week, said to her, that she should come the week following. Which she accordingly did, and renewed the contract for the week ensuing, in the same method. She continued to work with the said *Nicholas Walker* in *Winford*, in the manner abovesaid, for a year and a half; but during all that time constantly returned in the evening, and lodged at her aunt's in *Chew Magna*, and also resided with her aunt there on *Sundays*. On the last *Saturday* of the said service, the pauper covenanted to serve the said *Nicholas Walker* for a year at 1l. 10s. wages; entered immediately into the said service, and continued therein eleven months in *Winford*.—By the court: The pauper did not acquire a settlement by this service in *Winford*. For though a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service which was not performed under a hiring for a year, provided it be a continuance of the same service; yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: The former was as a day-labourer, or weekly labourer at most; not as a hired servant, who is part of the master's family. *B. S. C.* 280. 2 *Bott.* 184. *pl.* 248.

then for a year, and the service continued, will gain a settlement, the services not being dissimilar in kind.

T. 41 G. 3. R. v. Sutton. The pauper having gained a settlement in *Cheam*, hired himself by the week to Mr. *Hatch* of *Sutton*. Nothing was said about *Sunday* in the contract; but the pauper worked on that day occasionally when asked by his master, without receiving any additional wages; though he sometimes received some victuals. He received his wages every *Saturday* night or *Sunday* morning; and resided in his master's house during no part of the time, but boarded himself. At the expiration of nine months, on his master's family-servant going away, the pauper was hired in his place for a year, at 12l. *per annum*, and served eleven months under that hiring. The sessions, being of opinion that the pauper gained a settlement in *Sutton* under such hiring and service, confirmed the order.—*L. Kenyon*. It has now been too long settled to be recalled, that if there be a hiring for a year and a service for a year, though but a small part of the service were performed under the yearly hiring, a settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only ser-

But now there is no distinction to be made between services similar and dissimilar.

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ces, *ejusdem generis*, as it has been said, can be the term got into fashion some time ago. At the Mr. J. Forster thought that settlements were too required by the construction which the court was in on the statute: but since then the leaning has been in favour of them; and it has been supposed that a person might gain a settlement in that parish where he has laboured a certain time, as a reward for his labour: a strange notion examined; because some where or other he must always be maintained, if he be in want of it. I know not what to state this as a question upon which any doubt can arise. The pauper was hired by the week; nothing was said of Sunday; it is very seldom that there is: Why then Sunday may be excluded? If a servant be hired for a week, nobody doubts but that Sundays are included; that he is not included in a weekly hiring, if no exception be made. The sessions have found that there was a hiring for a week, which must mean the whole week. There is no reason stated to shew it was otherwise intended. The pauper was paid sometimes on the Saturday, sometimes on the Sunday, and whenever the master ordered him to do any work on Sunday, he did it: What is to be concluded from this but that it was his duty to do so? How do these facts shew that he was not under the master's control on the Sunday as well as other days of the week? In *R. v. W.*

with him about six months, still under the same contract. It was moved to quash the order of sessions, for that they were mistaken in point of law; the service in *St. Cuthbert's* being a continuance of the first contract and under it, for the said six months. On the other side it was urged, that this was not the same service as the first year's was, for that the first contract was completed and executed on both sides, and was determined. It had gained the servant a settlement in *St. Andrew's* by serving a whole year there. Unto which it was replied; That it is the constant practice for servants to go on upon the first agreement without any new one. And if this were not the case, then a servant who had lived with his master 20 years in different parishes without any new contract, must be settled in the parish where his master had lived in the first year of his service. And by the whole court: as there was a hiring for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where it was performed the last 40 days. 2 *Sir*. 1240. B.S.C. 256. 2 *Bott*. 278. pl. 345.

Chipping Warden v. Sulgrave. E. 27 G. 3. The pauper, subsequent to his gaining a settlement at *Sulgrave*, was hired to *Jonas Welch* of *Wormleighton*, the latter end of November 1785, till Michaelmas next, at 6l. 10s. wages. Two or three days before Michaelmas day his master offered him the like sum for the year ensuing, which he did not think sufficient. On Michaelmas day his master offered him seven guineas, and they agreed all but the expence of washing. The pauper had no intention of leaving his master, and he believed his master had no intention of parting with him; he continued in his master's house, and did his work as usual, but without any obligation; he lodged at his master's house, and did not remove any of his cloaths, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on that day, but the next day but one, being the second day after Michaelmas, he agreed to accept seven guineas as before offered him for the year ensuing. He did not expect that his wages were to be due on the Michaelmas following, but at the expiration of the year from the day he agreed to accept the seven guineas. He continued in the service till the 11 *hifuntide* following. — *Aylburst J.* I think this was a good service in *Wormleighton*, according to the authority of all the cases cited. All that the statutes require is, that there should be a hiring for a year, and a continuance in the same service for a year. Now the case states, that in November 1785 the pauper was

If the hiring be from November to Michaelmas, and the servant remain till the second day after Michaelmas without any new agreement, and on that day there be an agreement for a year from that day, the two services may be coupled.

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red to serve till the *Michaelmas* following, three days before *Michaelmas* the master offered some wages for the next year; that on *Michaelmas* offered him seven guineas, and that on the second *Michaelmas*, the pauper agreed to accept the seven which had been before offered. It is further stated that the pauper had no intention of leaving his master; he did all his master's work as usual; and though he considered himself at liberty to leave his master's service on the next day, and when he agreed with his master ten days after *Michaelmas*, he considered that the year was computed from that day, yet there was a year and service for a year: If so, the only question is, whether there were any discontinuance? It appears from the facts there was not; for the servant continued in the same capacity; he did his work as usual; and if he had been obliged to serve for half a year without entering into a new contract, he would have been entitled to a compensation for such service; the law would have implied that he continued under the former agreement, and would have assessed his damages by his former wages. Therefore he is to be taken to have been in the capacity of a hired man during that time. This is like the case of *R. v. St. Andrew's*. There the pauper was hired to *Dr. Lucy* who was at *St. Andrew's* for a year, and he continued with

man to milk and go to plough, and if he liked that work he might stay; the pauper refused; his master told him he might keep his earnest and go about his business; the pauper said, "Am I at liberty to hire myself to any other person?" his master answered in the affirmative. The pauper then went away. In the same afternoon the master met him again, and hired him to serve the place of milkman and go to plough; gave him 2s. 6d. earnest, and agreed to give him 6l. 6s. wages to serve him from that time till Michaelmas. The pauper immediately entered into the service, and continued till February; his master then hired him to serve the place of carter from that time to Michaelmas, gave him earnest, and agreed to give him 10s. 6d. additional wages; and the pauper continued till Michaelmas. In this case it was decided that there was a hiring and service for a year, and that the original stipulation that the pauper was not to go into service till the Wednesday, was a dispensation and not an exception. This case also decides that a hiring for a year may be connected with a subsequent hiring for less than a year. 2 Bott. 264 pl. 329.

And also, there may be an interval between the two services, if one end and the other begin as the same day, and the discontinuance will not prevent a settlement; even though the servant quit during that interval.

Fifehead Magdalen v. West Stower. M. 11 G. 2. *William Trim* hired himself to a master at *West Stower*, from *Midsummer* to *Lady day*, being three quarters of a year for 40s. At *Lady day* he received his wages of 40s. and left his master's service, and then went to his father's house in *West Stower*; and in about an hour returned to his master, and agreed with him for a year, at 3l. 10s. a year, and lived with his master half a year, in pursuance of the second agreement. When he went from his master's house, he had no cloaths but what he wore, except a shirt, which he left at his master's house.—L. Ch. J. *Lee* said, he remembered the resolution was first come into in L. Ch. J. *Parker's* time, that a hiring for a year and a service for a year were sufficient to gain a settlement, though all the service should not be under the same contract; and that Sir *Thomas Powys* (who was just come into the court) very much boggled at it: But now, he added, the rule is established, that if there be a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year. B. S. C. 116. 2 Bott. 256. pl. 320.

If a new contract be entered into on the last day of the first contract, there is no discontinuance though there be an hour's interval between the two, and the servant leave the place for that hour.

Poor. (Settlement.) [Sect. X. (3.)]

17 G. 3. *Popham v. Ellisfield*. The pauper was hired
 the 17th December 1773, to John Dalman of Ellisfield, to serve
 Michaelmas 1774; he went into the service the next
 day, and continued therein till nine o'clock on said Michael-
 mas day, when he received his wages, and took his cloaths,
 and left his master's house and service: about half an hour
 afterwards, his master came to him and desired him to stay,
 the pauper asked more wages than the master was wil-
 ling to give, but said he would see him presently at *Bosington*
 fair held that day for the hiring servants; at the fair
 he made an agreement with the master to
 serve him till Michaelmas following, and went into his
 service that evening, and continued therein for three months:
 the pauper thought himself at liberty to hire himself to any
 other person as soon as he left his master's house, and should
 have hired himself to any person who would have given
 him the wages he asked his master.—By L. Mansfield and
 the court: There is not the difference of an *iota* between
 this case and the last case of *Fifehead*, and every argument
 that would apply in the present: It is said there, as
 in that the pauper left his master's service, received his
 wages, and was absent some time; he might have hired
 himself with any other master during his absence: upon
 his return he does not agree to continue the *old* service,
 but makes a *new contract* for more wages: there was there-

him again for another year, and he served him in *Trentbam* for about six months of that second year, and then left him. By the court, here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year, and consequently no settlement was gained at *Trentbam*. *B. S. C.* 461. 2 *Bott.* 308. *pl.* 376.

E. 24 G. 3. R. v. Alton. The pauper *R. Johnston* being settled in *Alton*, hired himself to his uncle *D. Johnston*, a turner, in the parish of *Midhurst*, for a year. The pauper was to be found in board, lodging, pocket-money, and cloaths by his uncle, for whom he was to work in his trade of a turner; after he had served six months, his master finding him idle, they came to a new agreement, by which the pauper was to work in the said trade by the piece, and to be paid by the piece for what he should earn, and he to find himself in board, lodging, and clothes; on which last terms he served to the end of the year, sometimes working by the piece when he boarded and lodged out, and at other times he served his master in the house, and then he was lodged and boarded by his master.—The sessions held, that this new agreement determined the contract, and that the pauper gained no settlement.—But by the court, It is not necessary that all the service should be under a hiring for a year; a service under a hiring for less than a year, may be coupled with service under a hiring for a year, and give a settlement; there are many cases to that purpose; there can be no doubt but the original agreement still continued, and besides, the second hiring being general, would be equivalent to a hiring for a year, Order quashed. 2 *Bott.* 222. *pl.* 281.

Hiring first for a year, and agreeing in the middle of the year to work by the piece.

T. 18 G. 3. Monk Sherborne v. St. Giles's Reading. The pauper being an unmarried man, went into the service of *Mr. Wilder*, who kept an inn in the parish of *St. Mary Reading*, on 19th December 1763, under a general hiring as post-boy, and continued in that service in the said parish for seven months, when he married his present wife; after his marriage, he continued in his said master's service four months, when he took lodgings in the parish of *St. Giles's*, and removed thither with his said wife, where he slept for seven months, continuing to serve his said master the whole time without coming to any new hiring, making eighteen months in the whole; and then left his service.—*Willes, Ashurst, and Buller, Js.* thinking the point new, took time to consider.—*Willes J.* the court being then full, delivered the judgment of the court. This case depends upon the construction of the 7th sect. of Stat. 3 *W. c.* 11. The act was intended for the benefit of unmarried persons, and the principle of it is, that the parish

Servant marrying during the first service, cannot gain a settlement under a subsequent hiring for a year.

Poor. (Settlement.) [Sec

that reaped the benefit of the labour of a man united with a family ought to make a provision for that not able to provide for himself, but not for others if they derived no benefit; that 8 & 9 W. c. 3. s. 3 very same words as the former stat. "unmarried" "having child or children." The meaning of it is obvious, that the labour of one man shall not be to incumber a parish with the maintenance of a family. It has been determined this term in *R. v. Hedfor* and *R. v. Hanbury*, that marriage dissolves the contract, if it happen during the year a man has been hired as a single man; to such only of the act was meant to be extended, and for this married persons ought to continue in the settlement before marriage. If there had been a residence of in *St. Giles's* at the end of the first year, the pauper would have been well settled there; it would have been the case of *R. v. Hedfor*; but that is not the present case of *R. v. Crofcombe (ante)*, does not apply: that was the case of a servant unmarried during the first year. 2. Because the court did there presume the continuance of the old contract.—Here the pauper was of making a new contract at the commencement of the second year: Presumption can go no further; at that time he was a married man. In this case, supposing that a new contract had been made

sons in that capacity usually have : And accordingly he served as a hind two years from that *May-day*, being all that time a married man. He has not gained any settlement since. — L. *Kenny* Ch. J. This case appears to me not free from difficulty and doubt ; but upon the whole, I think that the pauper gained a settlement in *Great Chilton*. To the above case of *R. v. St. Giles's Reading*, I perfectly accede, but that cannot decide the present case. There the pauper was hired generally, which the law construes to be a hiring for a year, at a time when it was competent to him to acquire a settlement by hiring and service ; he was then unmarried : when the year expired, there was an end of the contract ; by continuing in service after that time, the court would infer a second hiring for another year : but at the end of the first year he was a married man, and was disabled from gaining a settlement by a service under a contract entered into at that time. But in the present case the pauper was unmarried when he made the first agreement ; and though he married in the course of that year, it has been very properly admitted that that alone did not defeat his settlement if he served out the remainder of the year under the original agreement made before his marriage. But it has been contended that that contract was dissolved. I admit that if there were an end of the relation of master and servant when the second agreement was made, the pauper could not gain a settlement in *Great Chilton*, but I do not think that that was the case. An alteration indeed in the man's situation took place : perhaps it was more convenient for him to live with his wife in a separate house than to continue to live in his master's family, and therefore it was agreed that he should go to another farm of his master's in the same township. But that alone did not put an end to the former contract. If a master, who had kept house, and an establishment of servants, chose to break up housekeeping in the middle of the year, and to put his servants on board wages, that would not put an end to the relation between the master and his servants, nor defeat the settlements of the latter. Then it was objected that the servant's employment after his marriage was different from that under the original contract ; but I cannot discover much difference, for under both agreements he was to serve in husbandry. And even if the nature of the service were varied, that would not defeat his settlement. A footman who was converted into a butler, would gain a settlement by completing a year's service notwithstanding such a change in his station. In this case also there was a prolongation of the term of service, and he was to continue half a year beyond the period originally agreed upon ; there was also an alteration of wages adapted to his change of situation : but I do

commence immediately at different wages, and for a different sort of service, it is a dissolution, and not a mere variation of the first contract.

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not think that either of these circumstances. The whole question turns on this, Whether a dissolution of the former contract? for second agreement was made at a time when disabled from gaining a settlement by hiring. I speak with great diffidence on this case, the majority of the court are against me. It strikes me that there was no end of the relation, servant, even for a moment, during the which continued in the service; and that as the contract was not dissolved by the subsequent alteration, the pauper gained a settlement in *Great Chilton* than a year under a yearly hiring entered into by an unmarried man. The case of *R. v. Allon* is in opinion, though that indeed appears to be a case more favorable than the present; because there, under the contract, the pauper was to work by the piece, which implied a liberty either to work or not, *Asburst J.* At first I was inclined to think that the first contract was not absolutely dissolved, and that the second was a continuation and modification of it: but on reflection, I am of opinion that the first contract put an end to the second. This is supported by the case of *R. v. Allon*, for there the principal terms of the contract respecting wages; it was paid by the piece instead of the by year.

not say that the service under the second contract was a service under the first, because on comparing the two contracts together, it appears that there is a difference in the duration of the term, in the kind of service, and in the wages, the former of which is most material; and where two agreements are totally inconsistent, the second must operate as a dissolution of the first. By the first contract the pauper was hired for a year, to commence at *Martinmas*; he served under that till *May* following, when he made another agreement with his master for another year, to commence at that day. Suppose at the end of the first year the servant had said that he would no longer continue in his master's service, for that he had been serving under the first agreement only, and was not bound to serve under the second; there is no doubt but that the master might have compelled him to serve until the *May* following, by virtue of the second agreement. This shews that the second agreement put an end to the first. It is not necessary to lay so much stress on the two other instances of difference between the two contracts, the kind of service, and the quantum of wages; *I rely most on the alteration of the terms of service, which I think is decisive.* — *Lawrence J.* It seems to me that in those cases no question arises respecting the benefit of any particular settlement gained by the pauper, but that the question must be considered on the facts as between the two contending parishes, because if the pauper be not settled in one, the burthen of maintaining him and his family falls on the other; and therefore there can be no bias in favour of one or the other settlement. In order to gain a settlement by hiring and service, there must be a hiring for a year, and a service for a year; and *the service for the last 40 days must be performed under a contract of hiring entered into when the pauper was unmarried.* Then the question in the present case is, Whether or not there was a dissolution of the first contract? and not whether there was a discontinuance of the service; for in *R. v. St. Giles's Reading*, the pauper continued all the time in the master's service; and there is no difference in this respect, whether the contract be put an end to by flux of time or by agreement. The only way in which it can be considered that the pauper gained a settlement in *Great Chilton*, is by treating the second as a prolongation of the original contract; and it has been argued that by the second agreement the pauper was to serve until the end of the then current year, and for six months longer. But it strikes me that this is not the fair construction of the second agreement; at the end of the first six months' service the pauper did not agree to serve for six months after the end of that year, but for a year to commence at the time of the second agreement. On the whole, it appears to me that the second

And the service for the last 40 days must be performed under a contract of hiring entered into when the pauper was unmarried.

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ond contract was distinct from the former one, and paid to it, because the second was inconsistent with it; that the pauper gained no settlement in *Great Chilton*, although the service for the last 40 days was not performed under the yearly hiring entered into when he was unmarried. *Bentley v. Bentley*, 5 T. R. 672. 2 Bott. 268. pl. 332.

E. 4 G. Ivinghoe v. Solebury. A person was hired for a year to one *Knight*, who rented a farm in *Ivinghoe* and lived with him half a year: The master lets the farm to one *Smith*, and the servant lives the residue of the year with *Smith* on the farm, without any words passed about dissolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the second master paid him his wages. The question was, If this shall be deemed the same service, so as to gain a settlement? — By *Pratt Ch.* and the court: This is a good settlement: If a master contracts with his servant to live with another for a certain time, it is service to the first master; and here being no new contract, he is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. 1 *Seff. C.* 121. *Cases of S.* 107. *Str.* 90. 2 *Bott.* 293. pl. 356.

E. 15 G. 2. Ladock v. St. Enoder. *John Roberts* was hired for a year in *Ladock*. His master died within the year, leaving *William Huddy* of *St. Enoder* his executor. The ex-

ould not gain a settlement, which is to be acquired only by a service for a year; but here he did not serve for six days, and there wants so much of a service for a year. — But by the court: A servant that lies thus under the visitation of God, which befalls him not through his own default, is and must be taken to be all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom. — Another circumstance in the same case was this: The servant, three or four days before his service expired, desired leave of his master to go to a fair to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return until the time of his service was expired. — By the court: This is nevertheless a settlement. The request of the servant is a reasonable request; and the law will not suffer a master to shew himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires; if he doth, the service in point of law continues, and he gains a settlement notwithstanding. *Cases of Settl.* 129.

A servant while ill is still under the service of his master.

A servant who absents himself for a reasonable cause at the end of his service, and against his master's leave, may nevertheless gain a settlement.

1 Str. 423. 2 Bott. 300. pl. 367.

Christchurch v. St. Matthew's Bethnal Green. E. 33 G. 2. *Elizabeth Maxey* was, on the 24th day of *August* 1757, hired into *Christchurch* for a year, and continued in the said service till the 7th of *August* then next following, when she was frightened into fits, and thereby rendered incapable of doing any service. Her master being taken ill, and disturbed by her fits, desired Mr. *Lemonier* who lived in the parish of *St. Matthew, Bethnal Green*, to take her into his house, that she might be under the care of her sister who lived there; but if Mr. *L.* refused to receive her, she was then to return to her master's house. Mr. *Lemonier* took her in; and she resided there about 5 days, and then was taken into the hospital. The day after she had been received into Mr. *L.*'s house, she returned to her said master's house to fetch away her cloaths, and her mistress gave her two shillings, which, with what she had before received, made up the full year's wages. No words of discharge passed between her and her mistress; but she looked upon herself as then discharged from her service; but believed that had she recovered her health her master would have received her again into his service. She continued under the same indisposition till after the year from the said time of hiring was expired, and never returned again into her said master's service. And on the 17th of *August* 1758, her master hired another servant in her place. — By *L. Mansfield* Ch. J. This is certainly a fair *bona fide* service for a year, without any fraud on either side. If a master gives his servant leave to go upon any other

If a servant at her master's instance go from his family on account of illness, to the hospital, and her mistress give her the remainder of her wages, and she never returns, it is a dispensation. Illness is not such an interruption as to prevent a settlement.

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the very words of the act of parliament, question arises, I should perhaps yield to the counsel in support of the rule. Or if they proved the point for which they were called, I should be strongly inclined to adopt them on this occasion. It has been frequently said here, that it is of great importance that decided cases should be adhered to; and in particular I applaud the rule *stare decisis*. If by the counsel on both sides are nine in number, they approach each other very nearly, there is a distinction between the four (*R. v. Richmond, R. v. R. v. St. Philip, Birmingham, R. v. Holborn*), relied upon by the one side, and the five (*R. v. R. v. Gresham, R. v. Grantham, R. v. Cambridge, Whittlebury*), on the other. I cannot distinguish the case from the four that were cited in support of the sessions; and it was decided in each of those cases, that a dispensation with the service, and not a discharge, was a contract. Perhaps I should have had some objection saying, in some of those cases, that it was a contract with the service; but it is sufficient to say, that the cases were so decided, and having been so decided, ought not now to be shaken. But the cases on the other side are distinguishable from those, because the contract was dissolved by the mutual consent of the parties.

immediately went away, and having gone about ten yards, returned for something he had forgotten: he then met his master again, who said he would give him the five guineas, and gave him one shilling earnest. The master, while he was putting his hand into his pocket for the shilling, said, you shall go away a fortnight at *Michaelmas*, because of your settlement, and I will give you that fortnight to get what you can; to which the pauper agreed, and he accordingly went to his father's and stayed a fortnight, during which time he worked for Mr. *Chester*, in digging sand on Mr. *Howes's* land, and received from Mr. *Chester* one shilling a-day, and once or twice during the fortnight he ate at Mr. *Howes's*. At the end of the fortnight he went to Mr. *Howes's*, and continued to serve him at *Stouchbury* till *Lady-day*, when Mr. *Howes* removed, and the pauper with him, to *Culworth*. Mr. *Howes* soon after died, and the pauper continued to serve Mrs. *Howes* in *Culworth*, till the time when he left her, and he then received his wages up to that time: and he believes there was nothing deducted for the fortnight, but he does not remember what sum he received. The pauper apprehended that his master would not have hired him if he had not agreed to go away for the fortnight.—*Asburst J.* The rule established in these kinds of cases is this: where there is a *bonâ fide* exception of part of the time at the time of the hiring, that is not a hiring for a year; but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master; and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question, Whether it be one or the other? must depend upon the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away, but on his return his master said he would give him the five guineas, which he agreed to accept, and gave him one shilling earnest. It is likewise stated, that while the master was putting his hand into his pocket, he told the pauper he should go away for a fortnight: but the contract was complete before that time, and what passed afterwards can only be considered as a dispensation with the service; for at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the shilling earnest was to bind the agreement for a year for five guineas; otherwise it appears to be giving the servant more than he originally asked for the whole year for serving him for a shorter period. If then the contract were complete before any thing was said relative to the

the year's end pay him a year's wages, it is a dispensation, and not a dissolution.

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fortnight's absence, this was a dispensation with and not an exception out of the original conception is a stipulation on the part of the person for whose benefit it is introduced; but here it was not on the request of the servant, but on the offer of the master. It appears, that he said that it was for the express purpose of preventing the pauper's gaining a settlement. Whether indeed the sessions might not have done so on the ground of fraud was for their consideration. There is no occasion to go into that ground, in my opinion this was a dispensation with the rule, in respect to the servant's apprehension, which is a case, that cannot vary the case: we are to do it on the terms of the contract, and not on the apprehension of the pauper. 2 T. R. 326. 2 Bott. 326. pl. 396.

Hanbury v. Tardebigg. T. 26 & 27 G. 2. A man was hired for a year at Michaelmas, but did not begin service till three days after Michaelmas day, and then he was absent about two or three days at a time, in the whole year, without consent, but was always received again when he came away, he agreed to make a deduction of 6s. 6d. for the time he was absent.—By the court: This was a settlement by this service. This court has not

to serve till the 30th of *October* following. Before the expiration of the year, namely, on the 4th of *September*, the pauper married a fellow-servant. The said fellow-servant had given a month's warning in *August* preceding to quit the service, and was to quit it in *September*, in consequence of such warning; but was desired by her master to stay till the 17th of *October*, which she did: And then the master said to *Springall* (the husband) that he supposed, as his wife was going away, he (the husband) would like to do so too. The husband replied he would like it better, if it was agreeable to the master. His master said he had no objection, as he had another footman coming, and would pay him his whole year's wages: which he accordingly did on the said 17th, in full to the 30th. On which said 17th of *October*, both the husband and the wife left the service. It was objected, that the pauper did not gain a settlement by serving for a year, because he left the service thirteen days before the expiration of his year. The act of parliament is express, 'That no such person so hired as aforesaid shall be adjudged to have a good settlement in any such parish or township, unless such person shall *continue and abide* in the same service during the space of one whole year.—By *L. Mansfield* (with whom the other judges concurred): There is no necessity of an actual service upon every day of the year. The master can always dispense with it. He can give leave of absence. Nay, if the servant is absent without leave, in the middle part of his year, such absence may be purged, as it has been termed, by the master receiving him again; that is, the subsequent consent of the master ratifies the act done. I am clearly of opinion, that the servant has in the present case sufficiently served his whole year. The master voluntarily gave him leave of absence for the last thirteen days; and, of his own accord, paid him the whole year's wages. *B. S. C. 740. 2 Bott. 310. pl. 316.*

R. v. St. Philip in Birmingham. T. 28 G. 3. Susannah Brookes the pauper, was originally settled in *Birmingham*; but subsequent to her settlement there, she was hired for a year to *Elizabeth Poole*, in the parish of *Powick*, where she served until within 8 days of the end of the term, when on account of some difference between them, she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her and paid her the full wages, which she accepted and quitted the service, and left the parish eight days before the year ended; but she said she would have served the year if her mistress would have let her. She was removed from *Powick* to *Birmingham*, which order the sessions confirmed.

If on account of a difference between a mistress and her servant the former discharge the latter and pay her her full wages, which she accepts, it is a dispensation.

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The court thought this case distinguishable from *R. v. Resham*, (*post*. p. 278.) and more like *R. v. Richmond*; and that it was to be considered more as a dispensation from the settlement, than a dissolution of the contract, and as a mere wrong act of the mistress in dismissing her, and which was submitted to, but not agreed to by the servant. Rule absolute. *T.R.* 624. 2 *Bott.* 329. *pl.* 398.

Frome Selwood v. Brixton Deverel. *T.* 6 *G.* 3. *Richard Stent* the husband of the pauper, was hired for a year at *King's Weston*, and served that year till within ten days of the expiration of the year, when *Stent* declaring to his master that he wished not to be settled in *King's Weston*, asked his leave to go and visit his relations; to which the master consented. After the year was expired *Stent* returned to his master and was again hired himself as a day labourer, and as such continued with him three months. On making up their accounts the master allowed out of his daily wages for the days he had been absent in the preceding year. The court held the settlement to be in *King's Weston*, looking upon the leave and consent of the master as fraudulent, and a mere evasion of the settlement. *B. S. C.* 565. 2 *Bott.* 312. 379.

E. 33 *G.* 2. *Kislingbury v. Nether Hyford.* It was stated, that *John Gare*, the pauper, was hired for a year, to widow *Mrs. of Farthing Stone*; and continued in the said service

tion of the particular sum earned by him, but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. And it is stated, that the original contract was not dissolved, save as aforesaid. Therefore we are all of opinion, that the contract was not dissolved, and consequently that the pauper gained a settlement with his mistress *Bliss* at *Farthingstone*. *B. S. C. 479. 2 Batt. 309. pl. 377.*

T. 32 G. 3. R. v. East Shefford. The pauper was hired by one *Birch* of *Welford* for a year, at four guineas wages; he accordingly went to his service on the day appointed, and continued there eight weeks, when he ran away, and was absent 13 weeks, during which time he worked with and received wages from another person. *Birch* then apprehended him by a warrant; but in his way to a justice, asked him whether he would come back to his place or go to Prison? and if he would come back, and go on in his place as he ought to do, he might. The pauper said, he would come back; and his master asked him then, what he should be willing to abate for the time he had been absent? The pauper said, he thought 18. 2-week would not hurt him, which was agreed to; and the pauper returned into his service, and continued till the end of his year, when he received all his wages, except the 13s which had been agreed to be deducted. — *L. Kenyon Ch. J.* If the old contract were dissolved when the servant absented himself, and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And therefore the question is, Whether the service after the pauper's return were performed under the old or new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from: But as there is a series of adjudged cases, the principle of which applies to the present, it is too much for us to overturn them; though if the question were now to arise for the first time, perhaps we should make a different determination. (It has been decided that absence at the beginning, the middle, or the end of the year, may be dispensed with, either with the consent of the master or for an excusable cause.) In *R. v. Hanbury* it was held, that an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time. Now, it is impossible to distinguish this case from that in principle. It has been said, however, that the absence in that case was for a shorter period than in the present: but I wish that those who used such an argument would have drawn the line, and given us the *ne plus ultra*. Probably if the first case after the statute had arisen upon an

If a yearly servant run away from his master and be absent for 13 weeks, and then his master apprehend him, and then give him leave to come back, deducting a sum for the time of absence, it is a dispensation.

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nce of 13 weeks, the court would have started at the
 tion; but the court have gone on step by step, and
 ng held that service for a fortnight may be dispensed
 I think we are bound by the principle of those cases to
 that this pauper gained a settlement at *Welford* by
 g and service; for on his return he was received again
 his master's service, where he continued under the old
 raet. There is no pretence to say that he entered into a
 contract; and the master's object in apprehending him
 warrant was to compel him to complete the service
 er the old contract. — *Buller and Grose* Js. of the same
 ion. 4 *T. R.* 804. 2 *Bott.* 335. pl. 402.

Peter's in *Sandwich v. Goodnestone*. *T.* 19 *G.* 2. *Wil-*
Markham was hired for a year, and lived with and
 ed his master in *Northbourne* till within three weeks of
 end of the year, when he asked leave of his master to
 o the herring fishery. The master consented if he could
 a man to do the master's work to his liking. *Markham*
 so, and paid the man. *Markham* went to sea, and re-
 ed at the end of the herring fishery, which was about
 e weeks after the end of his year. The master paid him
 is year's wages. — By the court; this was no dissolution
 he contract; *Markham* gained a settlement at *North-*
ne; and as the master had the benefit of the contract
 ng the whole year, so ought the servant also. 2 *Str.* 1232.
G. 351. 2 *Bott.* 305. pl. 372.

upon his said service and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down fifteen shillings, which the pauper took up, and went away to his father's house in *Norwich*, where he continued for six days, during which time he looked upon himself as a freeman: That the pauper then returned at the request of his master, and continued in the service to the end of the year, when he received 45s. being the remainder of his wages agreed for at the hiring.—By *L. Mansfield*: The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appears that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved: The master insists upon turning him away, and pays him down all his wages that were due; the consent on the other side is by taking the money up; Then how does he come back again? It is upon the request of the master: There is nothing by which the absence can be explained. The meaning of *purging an absence* is where the act itself is doubtful. 1 *T. R.* 101. 2 *Bott.* 326. *pl.* 395. (See *ante*, *R. v. St. Philip in Birmingham.*)

away: it is a dissolution, though he afterwards return at the request of his master.

T. 30 G. 3. R. v. Grantbam. Read, the pauper, was hired a fortnight after *Martinmas* 1784 by *N. Leadenham* of *Allington*, for a year, and entered upon his service, and continued therein about six weeks, when, with his master's leave, he went to assist his father who was ill, where he stayed thirteen weeks; when he returned, in consequence of a warrant having been obtained against him at the instance of his master, into his service under the original contract, and continued therein until *Sunday* evening, three days before the end of the year, when his master came home in liquor and abused him, threw him down, and afterwards turned him out of doors. The pauper slept at his father's that night in *Allington*, and the next morning his master would have had him return to his service, and stay out the year, but he refused to go again, and threatened, that unless he paid him the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then agreed to pay him his full year's wages, deducting for the thirteen weeks he was with his father; which he took and then left his service, *contrary to the express request of his master.*—*L. Kenyon* Ch. J. The circumstance stated in the case, that this transaction happened only three days before the end of the year, might have led us at first to suppose that there was some fraud intended on the part of the master; but none is stated. It has been said, and rightly so,

If a servant be turned out of doors by his master, and refuse to go again, though requested by his master, and receive his wages and depart contrary to the express request of his master, it is a dissolution of the contract.

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that an *actual* service is not necessary, for that a service is sufficient: But the question here is, V can say that there was a constructive service for year? and whether the relation of master and servant existed during that time? If the absence be for a cause, it is immaterial whether that absence began in the beginning, the middle, or the end of the year. It has been argued that this was an absence for a reasonable time on account of the ill treatment of the master, and that there was no *animus revertendi*, which distinguishes it from the class of cases alluded to. When a servant was ill used, though he could not have left the service without his master's consent, or without applying to the master to be discharged on that account, yet the master's refusal to the servant's leaving him, and both parties agreeing to an end to the contract. If the master had afterwards complained of the pauper's not serving him for those three days, the latter might have answered by saying, that the contract was dissolved. And if it's being absolutely put off only three days before the expiration of the year, it will defeat the settlement, what line can be drawn between this and the time of the service which is necessary to gain a settlement. If one day or three days may be dispensed with, other time may be equally so. In some cases, indeed, it has been equivocal what the transaction really

L. *Kenyon* Ch. J. It is now too late to say that a *constructive service*, pursuant to a hiring for a year, will not confer a settlement, though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the act; however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it ever has been decided that a settlement was obtained, *unless by construction the relation between master and servant continued during the whole year.* The cases of *R. v. Ijlip*, and *R. v. Maddington*, which have been relied on, do not govern the present. In the former, the servant did not return until after the expiration of the year, and the facts of that case left the question open, Whether or not the relation between the parties subsisted during the whole year? The court there thought that the master improperly refused his consent, and that though the servant was not in the actual discharge of his duty in his master's house; yet as he was liable to be called into his master's service during the remainder of the year, that he was constructively in that service down to the end of the year. But the present case differs from that; because, during the continuance of a year, a further act was done; when the servant returned after his absence the master not only found fault with him but refused to take him again into his service; it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer under the control of the master. In *R. v. Ijlip*, the servant was under the master's control during the whole year: he was liable to be called into the master's service whenever the master thought proper; but here the relation between the master and servant was rescinded before the end of the year, by the act of both parties; then it is impossible to say that the pauper was constructively in the service after that time. So in the case of *R. v. Maddington*, though the servant left the service three weeks before the end of the year, and went to his friend, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract: afterwards, indeed, when the master paid the wages, he deducted a part of them; but he could not by an act *ex post facto* deprive the servant of the benefit to which he was before entitled. But the case of *R. v. Gresham* is extremely like the present; there the court held, that by the act of accepting the wages, the servant agreed to put an end to the contract. I am therefore of opinion that there could be no *constructive service* in this case, when the parties themselves, by mutual consent, put an end to the relation of master

him his wages to that time, and will not let him stay out the year, it is a dissolution.

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ter and servant within the year. 4 *T. R.* 100. 2 *Bott.* pl. 401.

R. v. Upwell. *M.* 38 *G.* 3. The pauper was hired at Michaelmas 1791, by *J. Failor* of *Upwell* for a year, and continued in his service until within 15 days before the following Michaelmas, when her master kicked and beat her; she complained to her father of this ill treatment, in conjunction with him required her master to dismiss her from his service, under a threat of applying to a magistrate for redress, on account of the assault; her master then paid her the whole of her wages, and told her she might keep the remainder of the year, but she refused so to do, and immediately left the service. When this case was called in argument, the court said there was no question in it, that according to the facts stated, it must be considered an agreement by both parties to put an end to the contract several days before the end of the year, and consequently the pauper had gained no settlement in *Upwell*. And the case of *R. v. Grantham* was decisive of the present. *R.* 438. 2 *Bott.* 343. pl. 407.

R. v. King's Pyon. *M.* 44 *G.* 3. The pauper was hired by *Mr. Davies* of *King's Pyon*, to serve him from *Old May-day* 1800 to *Old May-day* following. At the end of eight months she had a dispute with her master, and he dismissed her from his service. She applied to a magistrate; she was ordered to continue in her service, but her master refused.

This is the true question to be considered. I do not mean to disturb any of the cases which have been already decided; but I am not inclined to carry the decisions further; still from the plain words of the act of the 8 & 9 W. c. 30. which are "that no servant shall gain a settlement, unless he shall continue and abide in the same service during the space of one whole year." And it seems to me, that when the parties stand in such a situation, that neither the master can compel the servant to come back into his service, nor the servant can compel the master to take him back, and neither of them have any legal means of compelling redress against the other, there is a dissolution of the contract. Grose J. agreed.—Lawrence J. Here is nothing like an abiding in the service for a whole year. In *R. v. Tibbleton* (6 T. R. 185.) Lord Kenyon said, that the cases in which it had been determined that a settlement was gained, notwithstanding the servant was not in the actual service of the master, proceeded on a supposition that the relation of master and servant continued throughout the year; but if the master had once parted with the control over his servant, and could not call upon him for his service, no settlement was gained; and in *R. v. St. Peter's*, (8 T. R. 478.) he laid down the same distinction, and held that to gain a settlement the servant must continue liable to serve the whole year. If the pauper be absent with the concurrence of his master it is a dispensation; but if the master cannot resume the right to the pauper's service it is a dissolution. Le Blanc J. agreed. Both orders quashed. 4 E. R. 351. 2 Bott. 347. pl. 411.

R. v. Sudbrooke. M. 44 G. 3. The pauper hired himself for a year, and after some time, being too ill of a fever to do his work, his master paid him his whole year's wages, when he left his master's service, and went to the Lincoln hospital, and never returned again to his master. The removal was to Sudbrooke and confirmed by the sessions. —Per Lord Ellenborough C. J. The doctrine of dispensation has only been allowed where both parties contemplated the continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily left his master's service, as it is stated in the case, before the end of the year, when his master paid him his whole year's wages; we must therefore take it, not only to be a ceasing to abide, in the words of the act, but a relinquishment of the service altogether. After that neither party could maintain any action against the other for the affirmance of the contract, or continuance of the service. Then if neither had any remedy against the other upon the contract, or any compulsory means of enforcing its execution, it must be dissolved in point of law. In *R. v. Castleschurch*, at the time

If after a hiring for a year a servant be taken ill and receive voluntarily his whole year's wages, and leave his service and go to the hospital, and never return, it is a dissolution.

time of the servant's departure, both parties contemplated the continuance of the service if the servant recovered. I do not overlook the circumstance pressed upon us, that there was an advance of the *whole year's* wages before the end of the year; but the same circumstance occurred in *R. v. Godalmin*, and *R. v. Castlechurch*, and yet no settlements were there holden to have been gained by the servants who quitted their masters' service before the end of the year by mutual agreement.—*Lawrence J.* agreed that the question to be considered was, whether the master did or did not retain his control over his servant during the whole year.—*Le Blanc J.* agreed and said, that he did not found his opinion upon the mere circumstance of the servant's leaving his master's house to go to the hospital, but that he thought that the parties came to a determination to put an end to the contract. That the servant's illness could not enable the master to put an end to the contract, but if the servant should chuse on account of illness to go away, illness could not prevent him from coming to an agreement with his master to put an end to the contract, and that here the servant received his whole year's wages, went away before the end of the year, went to the hospital, and never returned to his master again. That according to *R. v. Castlechurch*, the payment of the *whole year's* wages made no difference if the parties agreed to put an end to the contract before the end of the year. And that though illness would not enable *one* of the parties to put an end to the contract, it might still induce both to come to such an agreement. Both orders confirmed. 4 *E. R.* 356. 2 *Bott.* 349. pl. 412. *R. v. Rusball.* 46 *G.* 3. The pauper sometime before *Old Michaelmas* day 1802, the time at which the service in which she was then living at *Wison* in *Suffex*, was to end, wrote to her mother, desiring her to look out for a place for her; which she did, and in consequence treated with the wife of the Reverend Mr. *Peck* of *Rusball, Wiltsbire*, upon which Mrs. *P.* informed the mother that she would give her daughter the same wages as she did to her other servants, (being 10 guineas a-year, and a guinea for tea,) and wait till she came down, and desired that she would come as quickly as she could; but the mother made *no absolute agreement* for her daughter, but afterwards informed her that she *had got* a place for her *if she liked it*. The pauper left her service at *W.* immediately on its expiration, and went into *Wilts* without delay, and arrived on *Saturday* the 16th of *October* at her mother's; and on *Monday* the 18th Mr. *P.* applied to her to know if she liked to come into his service, saying that he wanted her to come immediately as he had company to dinner. She went to Mr. *P.*'s

P.'s house, and then it was for the first time agreed between Mr. P. and her, that the wages should be 10 guineas for the year, and a guinea for tea, with liberty of parting at a month's wages or a month's warning. She then went to work, and continued in Mr. P.'s service until *Old Michaelmas* day following. About five weeks before that time she gave her mistress notice that she should quit her service at the next *Old Michaelmas* day. On the said *Old Michaelmas* day 1803, the pauper came to her mistress to receive her wages, who paid her her whole year's wages and the guinea for tea, but told her she wanted a week of serving out her year. The pauper said she was willing to stay out another week; but the mistress replied that it did not signify as she had got another servant in her place, who was then in the house (which in fact she was). She then left the house and never returned into the service afterwards. The sessions were of opinion that the pauper was settled at *Rusball*. Two points were made in K. B. in support of the order of sessions: 1st. That the mother was to be considered as the agent of the daughter, and her bargain subject to the subsequent dissent of the daughter, or her approbation; and that the ultimate approbation of the daughter made the hiring which was originally conditional, an absolute hiring before *Old Michaelmas*; and that the subsequent stipulation relative to the month's wages or warning did not vary this, it not having been acted upon till the end of the year from the original hiring: 2d. That supposing the contract of hiring not to have commenced till the 18th of *October*, still a settlement would be gained; for the mistress's observation upon the pauper's offer to stay another week, that it did not signify, was a dispensation for the remainder of the year, confirmed as it was by the payment of the whole year's wages.—Lord *Ellenborough* C. J. The case expressly states that the mother made *no absolute agreement* for her daughter. The daughter arrived at *Rusball* about a week after *Old Michaelmas* day, when upon Mr. P.'s application to her to show if she liked to come into his service, she went there, and then it was, as the case states, for the first time agreed between Mr. P. and her, &c. with liberty, (which was as before mentioned,) of parting at a month's wages or a month's warning, this was on the 18th of *October*. Then about five weeks before *Old Michaelmas* day the pauper gave her mistress notice to quit at *Old Michaelmas* day. The mistress could not object to receive the notice, and therefore looked out for another servant, but when the pauper went to receive her wages, the mistress paid her the whole year's wages, but told her that she wanted a week of serving out the year. The pauper then said indeed that she was willing to

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stay another week; but as the mistress, in consequence of the warning which the pauper had given her, and which she had accepted, had provided herself with another servant, and did not want two of them; she told the pauper that it did not signify, as she had got another servant, on which the pauper left the house. The court was in doubt upon this statement that both parties intended to put an end to the service before the end of the year. The servant gave above a month's warning to quit on Michaelmas which she had a right to do, and the mistress accepted the warning, and both parties acted accordingly. And this it appears was in fact before the end of the year, whatever the servant might have supposed, when he gave the warning. Now the rule which the court has laid down is, the test whether the circumstance attending the termination of a servant before the end of a year amount to a discharge from the contract, or only to a dispensation of the contract; whether the master has the power afterwards of continuing the continuance of the service; if he have not, then it is a discharge of the contract; if he have, but chuse to dispense with it, it is a dispensation. If after this, any person sues the servant when the mistress desired her to leave, could she have maintained an action for it? Certainly not; and that is a fair test that the relation of master and servant had ceased to exist. The other judges agreed. B.

he had rather have staid out his year. The pauper left master's house immediately in consequence of what had said, and never returned to it. On 27th *March* a summons being taken out by the pauper against his master, they appeared before a justice of the peace for the said city; upon which occasion the pauper applied to the magistrate to direct his master either to receive him into service for the remainder of the year, or to pay him his whole year's wages; the magistrate verbally directed 2s. 6d. to be deducted from the year's wages and retained by the master. On the same 27th of *March* the pauper hired himself to a Mr. *Smith* of *Broadway*, and on the same day entered upon such service. About a week after he went to his former master Mr. *Jones* for his wages, who paid the sum of 6l. 10s. Mr. *Jones* some days afterwards applied for a return of the half crown directed by the magistrate to be deducted; but the same was never returned to him. The pauper was removed from *Leigh* to *Clifton-upon-Teame*, the sessions quashed the order. Lord *Ellenborough* said, this was the same case with that of *King's Pyon*, that servant actually entered into another service before the time when his first contract would have expired. His not receiving his wages before the year was out did not vary the case, for he would have received them at any time if offered. The other judges concurred. Order of sessions quashed. *R.* 539.

I. 1 G. Paulett v. Burnham. A person was a covenant servant for a year, but went away three weeks before his year was out, by his own and his master's consent; and was allowed 6s. of his year's wages for it. It was objected, that as a covenant servant, this doth import that it was by deed, and then the consent cannot discharge the covenant. —But by the court: Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning.

Can a man compel his servant to gain a settlement *us volens*? As to the covenant being by deed, and so the act continuing, perhaps he might bring an action on the covenant; and as to that point the service continued, but not so gaining a settlement, where the statute saith he must serve for a year, which is not in this case. *Caf. of Settl.* 84. y, 187. *1 Sess. Caf.* 71. *2 Bott.* 300. pl. 366.

I. 4 G. 2. R. v. Preston. A person served under a covenant for his whole year within five days, and then left his master by consent, the parish officers where he lived having given him two guineas to leave the parish. The justices held this to be no settlement, and stated the case specially. It was objected that this departure was fraudulent. —But by the court: The justices might upon evidence have examined into

If a servant, three weeks before his year is out, go away with his master's consent, and 6s. be thereupon abated of his wages, it is a dissolution of the contract.

into that point; and if they had thought that his departure was fraudulent, they would without question have stated it to have been so; but that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides that he hath not served his year. *B. S. C. 69. 2 Bott. 303. pl. 370.*

If a servant with his master's leave go away from his service, and his year expire during his absence, he thereby loses his settlement.

Syford v. Castlechurch. M. 9 G. 2. A person was hired for a year, which he served till the last 12 days, when he went away with his master's leave, and stayed till after the year was up, when he returned for his clothes, and was paid the whole year's wages. And on consideration that if they once allowed this absence for twelve days at the end of the year, (which differed from an absence in the middle of the year, which was purged by taking him again,) they should not know where to stop; it was determined that he gained no settlement. In this case the servant went from his service before the year was out, and the master consented to it; which is a plain determination of the service within the year. *2 Str. 1022. B. S. C. 68. 2 Bott. 304. pl. 372.*

If a servant part from his master with his own consent, and take the money for the time he served, it is a dissolution.

R. v. Seagrave. H. 23 G. 3. The pauper was hired from *Old Martinmas* to *Old Martinmas*. On *September 25th* he told his master he was going to be married; his master made no answer, he went on *Saturday* and was married; upon his return he had no intention of quitting his service, the master said he would not employ him any longer; he said he would go if he would pay him his year's wages; the master refused it, and said he would only pay him for the time he had served, and asked him if he would take his wages, or go before a justice? his master set about his business to his farm, when the pauper called him back, and said he would take the money for the time he had served, and that he parted with his own consent.—The court thought that the last words of the case were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued. *Calder 247. 2 Bott. 321. pl. 390.*

If at the servant's request his master give him leave to go to another service, and pay him the full wages, it is nevertheless a dissolution.

R. v. Thistleton. H. 35 G. 3. The pauper being settled at *Thistleton*, was hired to *Mr. Raworth* of *Knauston*, from *Martinmas* to *Martinmas*, and entered upon the service, and before the end of the year he went to *Billeston* statutes, which are before *Michaelmas*, and hired himself to *Mr. Humphreys* of *Billeston*, to enter into his service on the 19th of *October*, if *Mr. R.* would let him come then, and if he was refused, he was then to come at the end of his year. The next day the pauper asked his master to let him go, who said he could not spare him; he must get a new servant first: some time after he hired a new servant, and then said, "I have got a new servant, you may go now; I have not work for you both." The master then paid him his

whole wages, and he went away. This was about a night before *Martinmas*, and he entered into his new vice in 3 days. — *L. Kenyon Ch. J.* The distinction between different cases upon this subject seems to be this; if the pauper be absent from the service with the concurrence, remaining however subject to the control of the master, he may acquire a settlement, because this only amounts to a dispensation with his service: but if the master has once parted with his control over the servant, there is no settlement gained; and the receiving of the whole year's wages does not make any difference. In this case the master had given up all control over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what passed between those parties, it was evidently the intention of both that the pauper should become *sui juris*, and should be enabled to contract with another master. The cases, in which it has been determined that a settlement was gained, notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper's returning into his service after the wages were paid: but he agreed not to list on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper's liability to serve the first master ceased. *Asburst and Grose Js.* gave their opinions to the same effect. 6 T. R. 181. 2 Bott. 339. pl. 404:

M. 36 G. 3. R. v. Whittlebury. J. Roberts. his wife, and son, were removed from *Whittlebury* to *Paulerspury*; the justices quashed the order, and stated the following case: the pauper was born at *Whittlebury*, and was hired by *J. Grimdick* of *Paulerspury*, from *Michaelmas* to *Michaelmas*, at the wages of 50s. He entered into and continued in the service until within five days of the end of the year, when he went to *Towcester* statute to seek for a place; while he was there, he was suddenly taken ill of a fever, which continued for six weeks, and he was deprived of his reason a part of that time; he went from the statute to his mother, but neither of them having any money to maintain him during his illness, that night desired his mother to go to his master for his money, and to bring away his cloaths; the mother went the next day, and at her return she brought his money all but 1s. which his master had stopped for the remainder of the year, and gave it to him together with his cloaths, with which he

If upon being taken ill the servant send for his cloaths and money, which his master sends, it is a dissolution.

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satisfied, and he thought himself at liberty to hire him another master if he had been well enough. — *L. Ken*
J. I confess I have not been able to raise the least do my mind on this case. The case of *R. v. Tedford*, is a considerable authority to shew that when the sessions state the facts, as well as their determination, we are not precluded from examining the conclusion drawn by them from the facts. Therefore, without saying more on that head, entering into the consideration of the premises here, if the justices intended we should, I think that the conclusion which the justices drew was the right one. There is no doubt that the parties may put an end to the contract during any part of the year, either at the beginning, in the middle, or a day before the end of it; and if they do, the servant has no settlement, because the act of parliament requires, that the relation of master and servant should continue during the whole year. It is not necessary here to decide whether in every case the receipt of wages before the expiration of the year puts an end to the contract, or whether a servant being sick or ill during the year, the master can of his own authority discharge him, and put an end to the contract, or whether in such a case justices may put an end to the contract: but it is here stated that five days before the end of the year, (and it is material whether that happened five months or five days before the year expired), the pauper sent his mother to his master for his money, the latter paid the wages stipulated

them about the business the pauper was employed in, *Miles* (the master) bid the pauper go about his business. On which the pauper immediately ran away, and quitted his service; and hired himself to *John Whitby* for a year, at 55s. a year wages, and served *Whitby* for six months in *Whitchurch*. *Miles* then insisted on *Whitby's* not keeping the pauper in his service. *Whitby* paid the pauper his wages to that time; and the pauper quitted that service, and went one or two voyages up the river *Wye*, as a labourer to a bargemaster, for a fortnight. Then, at *Whitby's* request, and with *Miles's* consent, he returned into *Whitby's* service, without coming to any new agreement, or any mention of wages; and continued in *Whitby's* service in *Whitchurch* seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages. — It was argued, that the fortnight's absence being in the middle of the year, it was purged by the master's receiving him again. — But by the court: Here is an absolute dissolution of the contract, both by master and servant, at the end of six months. Whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring. *B.S.C.* 688. 2 *Bott.* 315. *pl.* 383.

M. 22 *G.* 3. *Hartley v. Westmeon.* *Robert White*, being settled at *Hartley*, was hired on 11 *October* 1779, to *John Gibbs* of the parish of *Tipton* for a year; he entered on the same day, and continued in his service until the 6th *October* 1780; when he was apprehended by a warrant, being charged by *Rebecca Haberdan* with being the father of a bastard child, of which she had been delivered six months before: That he was carried to an inn, and kept in custody by the parish-officers till the 10th *October*: That his master on the said 10th *October* settled with him at the said inn, saying, that he might not see him again, and deducted 1s. out of his wages, on account of his not serving the whole year; though he said he had no objection to the pauper's gaining a settlement at *Tipton*, yet perhaps the other farmers might: That the said master did not in any other manner assent to or dissent from the pauper's absence: That the pauper, after his being so taken, did not return to his said service. — By *Mansfield*: It is not necessary to enter into the question how far this is a crime, because the master has not discharged the pauper upon that ground: That it is wrong and an offence no man will deny; but whether to be animadverted upon both by the ecclesiastical and common law, is not material here: To be sure, it was not punishable as a crime at common law; and the statutes seem only to go to the punishment of the

If a servant be apprehended on a charge of bastardy, and be detained therefore for some days from his service, he cannot gain a settlement.

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the purpose of securing an indemnity where this offence is not assigned as the reason of the servant; and if it were, I have no objection. I think a master hiring a servant after an agreement, and that not in his own house, shall not be obliged to discharge him under this pretence of touching of his servant, or turning his house into a brothel. I do not go on that ground, but on the ground of an implied agreement to go before the end of the year: there was none: it was against the intention of the parties that it should affect the settlement; and it is not to go upon that, it ought to be returned that there was no agreement; nor did the master intend to prevent or promote the settlement; but he intended to leave that question open, which it is not the business of other persons who were interested to have cleared up. The true point then is, supposing no wages paid and no service, here are four days wanting in the service, and the servant is of his own act that he becomes incapable of continuing. His conduct is an offence against morality and against the laws of the country: what jurisdiction soever those laws are administered by, the consequences of it are equivalent to a wilful breach of contract: therefore think he did not gain a settlement: It is not necessary that had an action been brought for his wages, he should have recovered for these four days. *Cald. 129. 21*

The pauper was before

sted upon here was a fresh agreement, when he recovered from his sickness; and the beginning of his service was then. Under the former the mistress refused to receive him. Then considering the old contract at an end, the actual service was put for eleven months; that is, to the *Martinmas* next; and the submitting to the abatement of the month's wages at the end of the year is an affirmance of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the *legal or constructive service*; it shews also that there was no hiring for a year; so that both the hiring and service must be considered as imperfect and ineffectual.—*Buller J.* If a servant is taken ill, after the service has commenced, the master is bound to support him, and cannot turn him away on that account. But it is not true, that the service began under the first contract. That was executory. It was made some days before *Martinmas* to commence at *Martinmas*; and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced. *Cald. 298. 2 Bott. 263. pl. 328.*

4. Of the residence.

Forty days.] Less than forty days' residence in any parish will not gain a settlement. As in the case of *Goring v. Moleworth*, *E. 4 G. 2.* A person was hired for a year, and served the year. His master lived at *Goring*, and kept a boat, which navigated from *Goring* to *London*, but the servant was not forty days in the whole year at the parish of *Goring*, but served out the year on board the boat. — By the court: This was no settlement at *Goring*. *Sess. C. 327. Cas. of Settl. 219. 1 Barnardist. 436. 2 Bott. 277. pl. 342.*

Forty days residence necessary to a settlement.

But it is not necessary that the servant reside forty days together without interruption. As in the case of *Greenwich v. Langdon*, *M. 18 G. 2.* *George Wall* was hired for a year and served a year, as a livery-servant, at 7l. wages, to one Captain *Saunderson*, commander of the *William and Mary* yacht, who had an house and family at *Greenwich*, and resided there when not absent on the King's service. His master made frequent voyages to and from *Holland*, and he always attended him in the same; and he was never forty days together at *Greenwich*, but during his service he was there forty days at different times. — By the court: It need not be forty days all together; it is sufficient if within the year he reside forty days in the whole. *B. S. C. 243. 2 Bott. 278. pl. 344.*

Not necessary that the forty days be all together.

E. 16 G. 3. Lowes v. Lanstephan. The pauper was hired for a year to *John Williams* of *Lanstephan*, where his master occupied his own estate. He continued there with

When the last forty days' service is in different parishes, the

Settlement is where the servant lodges the last night.

his master in *Lanstephan* till some time before *St. Peter's-tide*, when his master and family removed to *Lowes*, in which parish his master rented another farm. He continued with his master in *Lowes* till the 16th of *January* following, when his master and family removed to *Lanstephan*, and his master afterwards constantly resided there. But the pauper was sent back by his master to *Lowes*, to thresh the corn, and look after his master's cattle. The pauper staid in *Lowes* two or three nights and days, and ate and lodged there; and then returned again to *Lanstephan* in like manner as aforesaid; and so continued between the said parishes to the end of his year, which was the 17th of *May* following. The pauper never continued forty days together in either of the two parishes after the said 16th of *January*, but lived and resided as aforesaid more than forty days in the whole, in each. He verily believed he resided most at the latter part of his service in *Lanstephan*, and lodged there the last night; and went from thence in the morning to *Lowes*, and took some cattle of his master's from thence to the Hay-fair, where he finished his service. — The court held him to be last legally settled in *Lanstephan*. *B. S. C.* 825. 2 *Bott.* 286. pl. 350.

And in like sort was determined the case of *Hulland v. Bradley*, *E.* 21 G.3. namely, that when a person has resided part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than forty days in each, his settlement is in the parish where he lodged the last night. *Doug.* 633. *Cald.* 118. 2 *Bott.* 288. pl. 352.

Service with the same master, but not in the same place where the hiring was, will gain a settlement in the last place.

Silverton v. Ashton. *T.* 12 An. A servant maid was hired for a year in the parish of *Ashton*, where she served half a year; then her master, and she with him, removed to the parish of *Potshall*, where her master took another farm; the servant continued with him in the parish of *Potshall* for the other half year; and the question was, Whether she gained any settlement in either of these places; and if she did, in which of them? — By the court: Here is what the act requires, a hiring for a year, and service for a year; for it is the same service, and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another, and serves him for one whole year, the parish he continues last in for 40 days before the end of his year, is the place of his settlement: and the reason why the 40 days gain a settlement is, because he comes there with his master, and you cannot remove him from his master; and having continued with him 40 days unremoveable, he gains a settlement. *Foley*, 188. *Cases of S.* 23. 2 *Bott.* 273. pl. 334.

Also

Also in the case of *R. v. Iveston*. *E.* 23 G. 3. The pauper being unmarried, was hired for a year to serve as a collier: *Iveston* and *Kyo* are two separate townships in the parish of *Lancheston*, and maintain their poor separately: he resided at *Kyo* from *Martinmas*, when he was so hired, till the *May-day* following, when he married; about fourteen days after his marriage, he took a cottage in *Iveston*, and without the privity of his master removed thither from *Kyo* with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service, and then they returned to *Kyo*.—The court were of opinion that this case was similar in principle to the last case of *Hulland*, and precisely that of *Lowe's* above, and that they ought to be adhered to: and that the settlement was therefore in *Kyo*. *Cald.* 288. 2 *Bott.* 289. 2. 353.

And in *R. v. Great Bookham*, *T.* 26 G. 3. The same point came in question, but was given up, being considered as fully settled. *Cald.* 290. 2 *Bott.* 289. (n.)

And also in *R. v. Undermilbeck*. *John Dixon* late husband of the pauper was hired for a year to work as a waller with *J. Bowness* then of *Caldbeck*, at ten guineas *per annum*. He entered upon his service in the beginning of *April* 1783, and continued with his master till *December* following, when his master having little to do in the walling business in the winter season, gave him leave of absence for six weeks to work for himself wherever he pleased, allowing 15s. out of his yearly wages. *Dixon* then went to his father's house in *Sawrey* and continued there seven weeks, being one week longer than he had leave for. About that time his master contracted with one *Braithwaite*, that he and his servant *Dixon* would assist *Braithwaite* in making some fence walls in *Pennington*, where *Dixon* continued working with his master above forty days, the same being till within about three or four days of the end of the term; when he went away again to his father's house in *Sawrey* with his master's consent; and whilst he so continued in *Sawrey*, the year's service with *Bowness* expired. During the time that *Dixon* worked in *Pennington* he slept in *Dalton*, but never worked a day's work in *Dalton*. When *Dixon* went the last time to his father's house in *Sawrey*, it was on the *Saturday*, and his year's service would not have expired till the *Tuesday* following. On the *Monday* morning he went to make up some fence wall on his father's account in *Sawrey*, but was taken ill that afternoon, and continued out of health for some weeks afterwards. *Dixon* afterwards went to his master who paid him his wages, deducting 15s. for the six weeks absence, and 2s. 6d. for the other week he was absent more

If a yearly servant serve 40 days in A. then go with his master's leave to B. his father's parish, and there remain above 40 days; then go to another parish to work for his master, and then for the three last days sleep in A., his father's parish, he gains a settlement in B.

Poor. (*Settlement.*) [Sect. X. (4.)]

agreed for. — It was contended that the residence in
 y for the last three days could not be connected with
 mer service in that place, because *Dixon did not serve*
at all during those three days; he was not employed there
 master in any kind of service; therefore the last forty
 service was in *Dalton*. — *L. Kenyon Ch. J.* It has been
 ly admitted that the contract was not dissolved by the
 t's absence for seven weeks, because the master con-
 to it, and received part of the servant's earnings;
 s the service continued in contemplation of law during
 hole year, I think the servant was settled in *Sawrey*,
 he slept the last night, he having before that time
 there 40 days in the course of the year. For it has
 decided after much argument, that the last day's
 e may be connected with any preceding service in the
 parish, notwithstanding any intervening service else-
 for 40 days. 5 *T. R.* 387. 2 *Bott.* 291. *pl.* 355.
 24 *G. 3.* *R. v. St. Andrew's Holborn.* This case was
 rought before the court in *Trinity Term*, 23 *G. 3.* and
 stated as follows: The pauper *William More*, his wife
 ildren, were removed from *St. Andrew's Holborn* to
juxta Bridworth, in the parish of *Great Bridworth*, in
 unty of *Chester*. The sessions quashed the order, and
 that the pauper *William More* was born in *Aston juxta*
orth; and being settled there about 1760, became a

appears that *Furnival's Inn* is not a vill within the 13 & 14 Car. 2. c. 12. The hiring there lays the foundation for a settlement, but none can be gained there. You must look back to the last place except *Furnival's Inn*, where forty days were served; that place is *Bath*; and it being now settled that settlements may be gained at watering places, the settlement was gained there, notwithstanding the *Scarborough* case. Therefore the order of sessions must be confirmed. 2 Bott. 289. pl. 354.

East Ilsey v. Weybridge. M. 15 G. 3. The pauper, *James Allen* was hired for a year, and so for two years afterwards successively, to the Earl of *Portmore*, to look after the said Earl's running horses; and during the said three years removed from place to place with the said horses, the last ten months of which time he resided with the said horses at *East Ilsey*, which was a public place for exercising and training running horses; which said Earl had not any house in *East Ilsey*, nor any estate there. The question was, Whether a groom, residing at a public place, where his master had no house or estate, merely for the purpose of training running horses, should gain a settlement at that public place? And the court were unanimous that this was a good settlement, being exactly the same case as that of the huntsman at *St. Alban's*. B. S. C. 722. 2 Bott. 284. pl. 348.

So a person who is hired as groom to some running horses, and goes from place to place to take care of them, will gain a settlement by residence at the last place, though his master had neither house nor estate there.

By *Holt C. J.* in *Clerkenwell v. Bridewell.* H. 11 W. The justices of peace have no power to settle any person in an extra-parochial place: but parishes by reputation are within the act. 2 Bott. 384. pl. 445.

The residence must not be in an extra-parochial place.

H. 1 G. *Bishop's Hatfield v. St. Peter's* in *St. Alban's*. *Langley* was a huntsman to one Mr. *Arnold*, and that Mr. *Arnold* lived sometimes in *Westminster*, and sometimes at his house in *Northamptonshire*, but Mr. *Arnold* had no settlement in *St. Peter's*; and *Langley* served the last forty days of his year in the parish of *St. Peter* with his master Mr. *Arnold*: which the justices at sessions thought gained no settlement for *Langley* in *St. Peter's*. But the court of king's bench, upon the order being removed by *certiorari*, quashed the order of sessions and held *Langley's* settlement to be in *St. Peter's*, by serving his master Mr. *Arnold* the last forty days of his year there, though his master *Arnold* had no settlement there. *Foley*, 197. 2 Str. 794. 2 Bott. 276. pl. 341.

The settlement will be at the place of the last 40 days' service though the master have no settlement there.

T. 8 G. *St. Peter's* in *Oxford v. Chipping Wycomb*. The master of the *Oxford* stage coach hired a servant for a year, to stay in an inn in *Wycomb* where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in *Oxford*. The question

The service may be in a parish where the master never lives, and so a settlement gained.

was

Poor. (Settlement.) [Sect. X. (4.)]

Where that servant gains a settlement, or whether any service? And by the whole court, he gained a settlement in *Chipping Wycomb*, though his master never lived there. 1 *Str.* 528. *Foley*, 200. 2 *Bott.* 275. pl. 338. *G. St. Peter's in Oxford v. Fawley*. Mrs. Cook lived with her son-in-law Dr. Clavering at *Christchurch*, and hired a servant for a year, who was settled in *St. Peter's*. Mrs. Cook afterwards went to *Fawley* upon a visit; and she with her servant staid there for three months, and afterwards came again to *Christchurch*, where the servant ended the year's service, being not forty days after her return. The question was, Whether this servant gained any settlement in *Fawley*, living with her mistress, who was only a visitor? Answered by the whole court: The settlement of the servant does not at all depend on the settlement of the master; for if a man hires a servant for a year, and after remove from one parish to another during that year, it may be properly said that the servant is hired in every parish he shall go into with his master; and the parish where he lives with his master the last forty days of his year, is the place of his settlement. And it is not material to the servant, whether he goes there under the capacity of gaining a settlement himself or not; the servant goes there in the capacity of a servant; and it is like the case of a school-boy; he gains no settlement, but the servant that waits upon him will.

year, when the master said it would be time enough when they returned home to *Elvetbam*; whereupon he continued for about six weeks with his master at *Scarborough*, when they returned home to *Elvetbam*; then he was hired for a third year, and served that year out at *Elvetbam*, and continued in his service for seven years more, and his wages were advanced every year, and afterwards he quitted that service, and married, and had four children mentioned in the order, which was, for removing his wife and four children from *Elvetbam* (the husband having left his family) to *Alton*, which gave the certificate. — The justices considered him serving altogether in *Elvetbam*, and that he could not gain a settlement there. It has been contended that they were in the wrong, for he ought to be considered as having gained a settlement in *Elvetbam*, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate-person will not gain a settlement; therefore it is indirectly contended for, that he had gained a settlement: His master goes (probably for his health) to *Scarborough*, and happens to stay there 40 days; and it is contended that the servant then gained a settlement at *Scarborough*, which discharged the certificate, and then he afterwards gained a settlement at *Elvetbam*. — The general question is, Whether this accidental service of 40 days at *Scarborough* acquired a settlement to the servant? It is immaterial whether the master has or has not a settlement in the place where the service is, because that will not prevent the servant gaining a settlement: But the objection here is, Whether the 40 days at *Scarborough* are to be considered barely as a continuation of the service at *Elvetbam*, or a new *bona fide* service at *Scarborough*? There are several cases where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to *Bath*, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will consider this, first, under the circumstances of the case; then secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: Substantially, the master lived at *Elvetbam*; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from *Alton*. Sir Henry happens to go to *Scarborough*, as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these public places of re-

sort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays 40 days at a place, shall that be a settlement? Suppose he stay 40 days with his master in a sea-port, being wind-bound, would that gain a settlement? The master's abode here is at *Elvetham*, which I lay great stress on. The domicil (as the civilians call it) of Sir *Henry* was not at *Scarborough*.—I shall next consider the authorities cited: The principal of which was the case of *St. Peter's* in *Oxford v. Fawley* (*Str.* 524.) The court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the court will in such case overrule it. But the present authority does not at all contradict the doctrine I have been laying down. This case was cited to shew, that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange*; where it is said, that in the case of *Rufford* it was not doubted, but that hiring into an extra-parochial place would gain a settlement. And so *Powell* J. somewhere said, that if a servant were hired for a year in *Ireland*, and the service were performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any public officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in *Strange*, is most certainly misreported. It is stated that the pauper was hired for a year into *Christchurch*, without saying how or under what circumstances her mistress lived there; and that her mistress went upon a visit to *Fawley-court*. Now her mistress being a single woman could not possibly have any abode in *Christchurch* but as a visitor or friend. And it is farther said, that the only doubt was, Whether the settlement gained at *Christchurch* was superseded or not? That could not possibly be so. For she could by no means gain a settlement in *Christchurch*, which was not only an extra-parochial place, but a single house only, having been once a monastery, being in nature of one of the king's palaces, which may be extra-parochial. I mention this, to shew the incorrectness of cases, which cannot be relied on. This case is also in *Foley*, 215. and *Cases of Settl.* 139. reported differently. But all of them together may serve to help us to the truth, and which upon inquiry I find to be this: Mrs. *Cook*, the mistress of the servant, had two daughters; one married to Dr. *Clavering*, dean of *Christchurch*; the

the other, to Mr. *Freeman* who lived at *Fawley-court*. And she lived alternately with these two gentlemen her sons-in-law; and was as much at *Fawley-court* as at *Christchurch*, and (as I observed before) it was not possible the servant should be settled at *Christchurch*, because it was an extra-parochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield v. St. Peter's* in *St. Alban's* (*Foley*, 197.) where a huntsman was hired by one Mr. *Arnold*, who lived sometimes in *Westminster*, and sometimes at *Northampton*, and the servant resided, where the hounds were kept, at *St. Alban's*; and the only question was, Whether the servant could acquire a settlement there by such service, as his master had none? and there was no doubt but he could; for he came exactly within the case of a stage coachman, who was hired to serve at *Wycomb*, though the master lived at *Oxford*; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, Whether there was a continuance of service with the master in *Westminster* or *Northampton*, but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament, and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of *London*. However, there is no precision in the case, on which the court can rely; and upon the whole, I think it not at all inconsistent with our present resolution; which is, that in the present case the whole of the service was only a continuation of the service at *Elvetnam*. However, I would have it observed in the present case, that I lay great stress on both the master and servant considering *Elvetnam* as their home, as also upon the precedent and subsequent service, and upon the circumstances of the certificate. — There was another objection at bar, but not relied on; that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the court will not presume. If he be living, they must remove him after to his family. And both the orders were confirmed. *M. S. 2 Bott. 280. pl. 346.*

And the difference between this case and that of *St. Peter's* in *Oxford v. Fawley*, seemed to be this: that a visitor, during the time of the visit, may be considered as part of the family of the person visited, and hath these *pro tempore* his home and place of abode; but a person at *Scarborough*, or other such like place of public resort, under the circumstances above mentioned, is only a sojourner, or in the nature of a traveller, or as a guest in an inn, and cannot in any

any sense within the words of the statute be looked upon as coming to settle there.

[Note; with respect to the aforesaid case of *St. Peter's v. Fawley*, Sir James Burrows says, there having been so much doubt and misapprehension concerning it, he has had the curiosity to transcribe it from the original record: which is as follows: Two justices remove *Mary Norris* from the parish of *St. Peter's in the East* in *Oxford*, to the parish of *Fawley* in the county of *Oxford* aforesaid. Which order was discharged by the sessions, upon appeal; it appearing (as it is stated in the order of sessions) that the said *Mary Norris* was hired at *Christchurch* in *Oxford*, an extra-parochial place, on the 16th of *May* 1717, for one year, to Mrs. *Cooke*, who then lived, and ever since hath lived, with her son-in-law Dr. *Clavering*, canon of *Christchurch* college aforesaid, as a sojourner or boarder; and continued in her service there till the month of — in the same year; when Mrs. *Cooke* went upon a visit to her son Mr. *Freeman's*, in the parish of *Fawley* aforesaid, where she continued three months, upon the said visit; and her said servant *Mary Norris* was with her at the said Mr. *Freeman's*, and continued there in her service all the three months. At the end of which the mistress returned to *Christchurch*, and there the service expired, she having served her mistress the whole year, in pursuance of the first hiring: And the order of sessions was quashed, and the original order affirmed. *B. S. C.* 422.

The servant need not lodge in his master's house.

R. v. Whitechapel. E. 11 G. A person was hired for five years to work at a glass-house in *Whitechapel*, at the rate of 10s. a-week; but never lodged with his master in the house at any part of the time, but at another house in the parish.—By the court: He has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish. *2 Sess. C.* 114. *Foley*, 146.

Where a person during his service marries, and then lodges with his wife for the last 40 days, in another parish than that where his service is performed, he nevertheless gains a settlement in the parish where he lodges.

T. 18 G. 3. Little Marlow v. Hedfor. The pauper was hired for a year to Lord *Boston*, and served him as a gardener for several years in the parish of *Hedfor*; 95 days before the end of the 4th year, he married a woman of the parish of *Little Marlow*, and from the time of his marriage until the end of that year's service he lodged with his wife in *Little Marlow* 40 nights, but not successively, but did not lodge 40 nights elsewhere after his marriage. It did not appear that Lord *Boston* had any property in *Little Marlow*, nor where the pauper lodged the last night of the year's service in which he married. It appeared that he did not see Lord *Boston*

Boston within that year in which he married, nor had any consent to be absent those 40 nights; and that he never performed any service in *Little Marlow* on account of his master; that he continued to serve Lord *Boston* several years after his marriage.—*Dunning* contended in support of these orders, that the inclination the court had always shewn in favour of settlements need not be indulged in this case, as the servant gained a settlement by the first year's service. Formerly it was questioned whether the service ought not to be in the same house; and though it was thought sufficient if in the same parish, yet it had since been holden, that if a servant continued 40 days in a parish in *his master's service*, the reason he gained a settlement by the 40 days was, his coming into such parish *with* his master; and that the court would not permit the servant to gain a settlement where his master had no property, and without his consent or knowledge, and clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him.—*Wallace*, in reply, cited a variety of cases to shew that a man is settled where he lodges the last 40 days, although not successive; that the *R. v. Castleton* (a) was in point; the only difficulty was, Whether the want of the master's knowledge could make any difference? If his master's business were done as well as if he lodged in the family, which the case shewed it must have been, it could make none.—*L. Mansfield*: The cases seem to have settled it. The other judges concurred. *Cald.* 51. 2 *Bott.* 287. *pl.* 351.

And in the case of *Avening v. Nympsfield*. *H.* 21 *G.* 3. the same point came in question, but was given up by the counsel as being fully settled. *Cald.* 107. 2 *Bott.* 288. (n.)

R. v. Sutton. *T.* 34 *G.* 3. *H. Beardman* the pauper being settled in *Sutton*, was about *Christmas* hired for a year by *Mr. Kerfoot* of *Great Sankey*, to serve in husbandry for 7l. 10s. and 5s. more in case the master approved of his service; he continued in that service, until by the visitation of God he was deprived of his reason about the beginning of *November* next following, when his father fetched him away to his own house at *Bold*, and in two or three weeks afterwards he received the wages of 7l. 10s. but not the 5s. and the father afterwards kept him at home as part of his family for about ten years in *Bold*, where the father died; the son all that time, as well as since, continuing in the same situation. The sessions on appeal confirmed the order by which he was removed from *Bold* to *Sutton*, and stated the

Servant with the same master, but removed from his house on account of illness, is still considered as residing with him, and as being his servant, and gains a settlement in his master's parish.

(a) *Ante*, title *Poor, Certificate*. And also *Poor, Settlement by apprenticeship*.

above case for the opinion of this court. — L. *Kenyon* Ch. J. The cases that have already been decided on this subject, have settled the principle on which our judgment must proceed in this case. As this is a removal from *Bold* to *Sutton*, all we are called upon to decide in this case is, Whether or not the pauper be now settled in *Sutton*? and whether the settlement which he gained in that place has or has not been superseded by a subsequent settlement? for any question that may hereafter arise between the parishes of *Bold* and *Great Sankey* will not affect the case now before the court. It is stated, that the pauper was hired for a year in *Great Sankey*; that he continued in that service as long as he was capable of performing it; but that in the course of the year he was deprived of his reason, and consequently rendered incapable of discharging his duty to his master. But in the consideration of questions of this kind it is immaterial whether the servant's incapacity to perform his service proceed from an infirmity of body or of mind. Where indeed the servant commits a crime, the master may apply to a justice to have him discharged; but if no such application be made, the relation of master and servant subsists. In this case there being no fault in the servant, nor any application to a magistrate to discharge him, (for which indeed there was no cause,) I am clearly of opinion, that the relation of master and servant continued during the whole year, and consequently that the pauper acquired a settlement by that service. If he had recovered his reason before the expiration of the year, the master might have been compelled to receive him again into his house. It was said by L. *Mansfield*, in *R. v. Christchurch*, that the absence of the servant on account of sickness will not prevent his gaining a settlement, and that it is immaterial whether or not such absence happen in the middle or at the end of the year. With regard to *R. v. Sharrington*, though it was not argued, it appears that the court exercised their judgment upon it, and I subscribe to the doctrine of it. These observations are sufficient to dispose of this case; but there is another question behind, and as probably the magistrates below will be called upon to make another order, I will beg to say a few words upon it for the sake of their information. That question is, Whether, supposing the pauper gained a settlement by reason of his service with *Kerfoot*, he is settled in *Great Sankey*, the parish where the master lived, and where the service was in contemplation of law performed, or in *Bold*, where the father lived and received his son for the last 40 days of the year. And upon this question I have as little doubt as on the other point; being of opinion that the settlement is in *Great Sankey*, where the service was in law performed, though the servant did not
in

in point of fact reside there the last 40 days of the year. In general the servant is settled in the parish where he serves the last 40 days: but I consider the residence with the father under these circumstances as a residence in an hospital. We should thwart our own feelings, and act contrary to humanity and principles of public policy, if we were to determine that the father in this case brought a burden on his parish by receiving his son into his house from motives of tenderness and affection. And it must be remembered that this is not a case *sui generis*; there are others that stand in *pari ratione*. In general a bastard is settled in the parish where he is born, but if he be born in a gaol, or house of correction, his settlement is in his mother's parish. And I think that the case of *R. v. Sharrington* goes some way to warrant my opinion in this case. For I cannot consider the pauper's residence with his father as a performance of service with his master; he was there *diverso intuitu* in order to recover from his illness, and not for the purpose of serving his master. I am therefore clearly of opinion that the pauper's former settlement has been superseded by the subsequent one which he gained in *Great Sankey*. The other judges concurred. Both orders quashed. 5 T. R. 657. 2 Bott. 336. pl. 403.

Sect. XI. Settlement by apprenticeship.

The statutes relating to the settlement of apprentices are these following; which I will first exhibit together at one view, and then set forth the judgment of the court of K.B. upon the several parts thereof.

By the 43 El. c. 2. s. 5. *It shall be lawful for the churchwardens or overseers, or the greater part of them, by the assent of any two justices of the pence (dwelling in or near the same parish or division where the same parish doth lie,) to bind any poor children to be apprentices where they shall see convenient, till such man-child shall come to the age of 24 years, and such woman-child to the age of 21 years, or the time of her marriage.*

Of the statutes.

By the 13 & 14 C. 2. c. 12. *On complaint by the churchwardens or overseers of the poor, within 40 days after any person shall come to settle in any parish, on any tenement under 10l. a year, two justices, (1 2.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.*

But by the 3 W. c. 11. *If any person shall be bound apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement.* s. 8.

By the 12 An. st. 1. c. 18. *If any person after June 24th 1713, shall be an apprentice bound by indenture to any person residing under a certificate in any parish, township or place, and*

(**Poor.** (**Settlement.**) [Sec. XI.

herwards having gained a legal settlement in such parish, township or place; such apprentice, by virtue of such apprenticeship, indenture or binding, shall not gain any settlement in such parish, township or place; but every such apprentice shall have his settlement in such parish, township or place, as if he had been bound apprentice. s. 2.

And by the 9th & 10th W. c. 11. No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall bona fide have a tenement of 10l. a year, or execute an annual office in such parish. (And consequently not by apprenticeship.)

And by the 8 An. c. 9. and 9 An. c. 21. The master shall pay a duty of 6d. a pound, for 50l. or under, and of 12d. a pound for every pound above, of money, or of things not money, according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish offices, or out of public charities. The sum given to be inserted in the indenture in words at length. And besides the duty before requisite, the indentures to be moreover stamped with a proper stamp, denoting the 6d. or 12d. a pound respectively. And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped or tendered to be stamped in the time limited; such indentures shall be void, and not valid in any court or place, or to any purpose whatsoever.

And the proper stamps upon indentures of apprenticeship,

bound to keep him; for this can only be done upon the complaint of the master or apprentice: and continuing 40 days unremovable without notice is the same thing as continuing 40 days removable, but not removed after notice; and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many settlements as there are spaces of 40 days in the term of his apprenticeship, and where he serves the last 40 days, there is his last settlement: consequently, he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office; or he may gain a settlement, whilst his master shall gain none, as when he resides upon a tenement under 10l. a-year; and of consequence the master may be removed, when the apprentice cannot be removed; and in such case the master shall be necessitated to apply to the justices, to compel the apprentice to go along with him.—The order in which this section will be treated, will be:

1. *By what instrument the binding shall be.*
2. *Who may be parties.*
3. *Of the execution of the deed of apprenticeship.*
4. *Of the time for which it may be.*
5. *Of allowance by the justices.*
6. *Of the stamp.*
7. *Of the consideration and duty thereon.*
8. *Of the contract.*
9. *Of residence.*
10. *Of service with different masters.*
11. *Of service under assignment of the indenture.*
12. *Of service, the indenture being delivered up; (and herein of the delivering up of parish indentures.)*
13. *Of evidence relating to indentures of apprenticeship.*

1. *By what instrument the binding must be.*

R. 21 G. 2. *Stratton v. Llewannick.* Two justices make an order to remove *Stephen Petbick* from *Llewannick* to *Stratton*. And upon appeal, the sessions confirm that order. The case was: *Stephen Petbick* the pauper, at his age of 14 years, was by his mother (being then a widow) placed as an apprentice with his brother-in-law *John Petberick*, by trade a cordwainer, in the parish of *Stratton*, for six years, to learn the said trade: But at the time of placing him as aforesaid, no indenture of apprenticeship was executed. His mother agreed to pay to his master 4l. in hand, and 4l. at the end of three years, and his master was to find him meat, drink, washing, and lodging, during the said six years, and his mother was to find him cloaths during the said term. All which was performed accordingly. And the said *Stephen Petbick* believes, that in

Binding to be in writing; agreement to bind on parol binding insufficient.

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out the last year of the said term, one part of an indenture was prepared, in order to bind him an apprentice to the said *John Petherick*, pursuant to the said contract or agreement: but he doth not remember that he executed the said indenture, or that it was executed by his mother and the said *John Petherick*, or either of them, nor what is become of the said indenture. — It was moved to quash these orders, for that all doth not amount to such a binding as will gain a settlement, there being no indenture duly executed. The court refused to think this exception too strong to be answered; and made a rule to shew cause why the orders should not be quashed: which rule was afterwards made absolute, without cause being shewn. *B. S. C. 272. 1 Bott. 530. pl. 745.*

22 G. 2. Mawnam v. Falmouth. It was moved to quash an order of two justices, and an order of sessions concerning the same, for removing *Jane Luckey* from *Falmouth* to *Mawnam*, upon the foundation of her having served an apprenticeship there. The objection was, that it was only a parole binding; whereas the act requires that it be by indenture. On a rule to shew cause, the counsel on the other side acknowledged that it could not be supported. *B. S. C.*

2 Bott. 531. pl. 747.

See also in *R. v. Margram. 5 T. R. 153. post.*

5 & 6 G. 2. R. v. Mellingham. A person was bound by indenture, though not actually indented; and the sessions

cloathing, &c. from this day until *Michaelmas* 1780; *R. Fisher* to have 20*l.* with her, and at the expiration of the said time to double clothe her; witness my hand *R. Fisher.*" This agreement was not stamped.

The court said, That although the act of parliament dispensed with the indenting of the deed, still the binding must be by deed. 4 *T. R.* 769. 2 *Bott.* 377. *pl.* 440.

2. *Who may be parties.*

Newbury v. St. Mary's in Reading. *H.* 3 *G.* 2. A poor boy of 14 years of age, bound himself apprentice for seven years to a weaver. It was argued that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the court; It did gain him a settlement; for an infant may make an indenture for his own benefit. *Foley*, 154. *Andr.* 373. 2 *Bott.* 383. *pl.* 425.

An infant may bind himself.

So also in *R. v. Sultern.* *E.* 24 *G.* 3. It was held to be no objection to the binding, that the party bound was of the age of eight years. It was also said by the counsel, and not denied by the court, that *unfitness* was a matter to be determined by the session on evidence. 1 *Bott.* 613. *pl.* 886.

An infant of a eight years may be bound.

So also in the next case of *R. v. St. Petrox in Dartmouth.*

Nor is it any objection that the master is an infant.

In *R. v. St. Petrox in Dartmouth.* *H.* 31 *G.* 3. The father of the pauper's husband agreed with *Mary Hayne*, widow, to bind his son, then aged about eight years, an apprentice to *R. H.* son of *M. H.* who was then between the ages of 14 and 15, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. And it was admitted by the bar, and agreed by the court, that this indenture of apprenticeship was not absolutely void, on account of the infancy of the parties, and that unless there were some other objection the pauper gained a settlement by virtue of the apprenticeship. 4 *T. R.* 196. 3 *Bott.* 377. *pl.* 439.

And the master may also be an infant.

The condition of the master is immaterial.

R. v. St. Margaret's, Lincoln. *H.* 13 *G.* 3. It appeared by the case stated, that the pauper, being a poor child belonging to the parish of *St. Martin's, Lincoln*, was regularly bound apprentice by the parish to one *Mark Johnston* of *St. Mary, Lincoln*, labourer, to learn the art and mystery of a housewife. — There were also other facts in the case upon which distinct points were made. But on the fact above

The master's condition is immaterial.

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it was objected that such a binding was evidence of being *fraudulent*. And the court said, that whatever suspicion of fraud the circumstances of the case might shew, no fraud was found or even hinted at, and therefore could not suppose it existed.

Note.—It was stated further in the case, that the first master assigned the apprentice to a *coal porter*, and he *lent* her the keeper of a cold bath. 1 *Bott.* 610. *pl.* 882.]

Principle. *T. 9 Ann.* If an apprentice be bound to a master who has no right to take an apprentice, yet a settlement will be gained by service under such an indenture.

And by *St. Bride's v. St. Saviour's*, *H. 4 Ann.* The apprentice will gain a settlement in the parish where he is bound, although his master have no settlement there. *1 B. & M.* 533.

The master and the apprentice must be parties to the deed.

R. v. Chesterfield. *T. 9 W. 3.* A servant was put by his late master to a barber, who was to teach him to cut and make perriwigs, for which he was to have 5*l.* The servant was no party to the covenants between his master and the barber.—And the court adjudged it not to be a settlement, because it was no service, and the

but was under no obligation to do so: he only continued to be taught as long as he pleased, but was not obliged to stay. This was no apprenticeship. 8 E. R. 25.

R. v. Ripon. H. 48 G. 3. Removal from *Ripon* to *Darlington*, and quashed by the sessions. The pauper, being 23 years of age, was put apprentice by her father-in-law with her own consent, to one *Husbands* in *Hunton*. She was present at the making of the agreement: but the indenture was only executed by the master and her father-in-law, but not by herself: neither was it ever tendered to her for that purpose, though she lived under it with her master for nearly 12 months in *Hunton*. And without argument, *by the court*, Is it possible to maintain this to be a competent binding of an adult who was no party to the indenture? The relation of master and apprentice did not exist. 9 E. R. 295.

An apprenticeship indenture is void if the pauper (though an adult, and assenting to the contract) do not become a party to the deed.

3. *Of the execution of the deed of apprenticeship.*

R. v. St. Peter's on the Hill. H. 14 G. 2. The pauper was bound an apprentice in *St. Peter's* in *Chester*, to a carpenter for seven years; but the indentures were not executed by his master. *Lee C. J.* It is objected, that this indenture is not good because not executed by the master, but that makes no difference if the apprentice himself were bound. 2 Bott. 367. pl. 430.

If the apprentice be bound, the indenture is good though the master do not execute it.

So in *R. v. Fleet*, T. 17 G. 3. The same point was ruled respecting parish apprentices: 2 Bott. 371. pl. 435. — And in *R. v. St. Nicholas* in *Nottingham*. M. 29 G. 3. Where the pauper was bound out as a parish apprentice, and the deed was regularly executed by all but the pauper, who did not sign it, though he lived under the indenture five months, it was held that the indenture was binding notwithstanding that defect. And in both these cases stress was laid upon the master's having received the apprentice, and the latter having served under the indenture. 2 T. R. 726. 2 Bott. 373. pl. 437.

Parish apprentice's indenture not void for want of signing by the apprentice.

So also in *R. v. Woolstanton*. H. 12 G. 2. It was held that the signing of an apprenticeship indenture by a boy bound out by the parish was not necessary. 1 Bott. 600. pl. 876.

In this case the apprentice was bound out against his own consent.

As to voluntary apprentices, see *R. v. Cromford*, ante.

4. *Of the time.*

St. Nicholas v. St. Peter's, both in *Ipswich*. M. 10 G. 2. There was an indenture of apprenticeship for four years; which

Binding for less than four years,

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the apprentice served accordingly; whereas the stat. requires that it shall not be for less than seven years. The question was, whether this should gain a settlement. It was urged that it could not; for that the said act of the 5 Eliz. enacts, That all indentures otherwise by that statute shall be clearly void in the law to all uses and purposes; and it is appointed by the same statute, that persons dwelling in cities and towns corporate shall take apprentices for seven years at the least; whereas this master, being in a town corporate, hath taken this apprentice for four years.—By L. *Hardwicke* C. J. and the court: the indenture is not void, but only voidable at the election of the parties themselves, if they think fit to take advantage thereof, and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish who have had the benefit of the service of the apprentice. *B. S. C.* 91. 2 *Bott.* 363. *pl.* 428.

Peterson v. Stoke Fleming. *T.* 19 *G.* 2. The pauper was a parish apprentice in *St. Peter's* until her age of 21, or the alternative or till time of marriage as the statute enacts. It was urged that by this binding and service she gained no settlement, the binding being contrary to the statute and therefore void. But by the court; The above case of *St. Nicholas v. St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves,

stice. The indenture was *separately* assented to by two justices, by signifying the same; but the two justices *did not assent to or sign the same at the same time*, or in the presence of each other. It was contended that this was a *ministerial act*, and that therefore it was no more necessary under the 43 *Ed. c. 2. s. 5.* for the two justices to assent together, than it was for them to do so in the case of a rate according to *s. 1.* of the same act.—But *L. Kenyon C. J.* held clearly that *this was an act judicial* of a nature, and as such that the justices must when they do it, meet and confer together. The other judges agreed. 3 *T. R.* 380. 1 *Bott.* 620. *pl.* 890.

parish hindling, must do it in the presence of each other.

R. v. Winwick. H. 40 G. 3. In this case the pauper was settled by birth at *Winwick*; the counsel for which parish offered in evidence an instrument purporting to be an indenture dated 18th *December 1789*, whereby the pauper was bound an apprentice by the parish officers of *W.* to one *T. H. of Spratton.* The instrument was signed by the *Rev. Dr. Freeman*, one of the justices, at the parish where he resided, and the other justice, the *Rev. Dr. Preedy* was not then present; a few days afterwards, the *Rev. Dr. Freeman* went to the house of *Dr. Preedy*, where the same was signed in the presence of all the parties.—*L. Kenyon C. J.* This case is clearly distinguishable from that of *R. v. Hamfiall Ridware*, because though one of the magistrates first put his signature to this indenture at a time when the other was not present, both the magistrates afterwards met on the subject, and agreed to the propriety of the measure when the other magistrate also executed the instrument.

But one may sign alone, and afterwards be present at the signing by the ot. &c.

The principle on which this case is determined was recognized some years ago in a case of murder: a magistrate who kept by him a number of blank warrants ready signed, on being applied to, filled up one of those, and signed and delivered it to the officer, who, on endeavouring to arrest the party, was killed: the judges were of opinion that this was murder in the person killing the officer, and he was accordingly executed. And this was not on a new principle then for the first time established: it had always been uniformly acted upon. 8 *T. R.* 455. 1 *Bott.* 625. *pl.* 894.

By *R. v. John Saltern. E. 24 G. 3.* It is decided that the justices must by their signing testify their assent. 1 *Bott.* 613. *pl.* 886.

The justices must then and no other mode of a lawance is good.

6. Of the stamp.

There are two kinds of stamps required to indentures of apprenticeship: one, in respect of the instrument, as such; the other in respect of the fee. The first kind is now regulated by the 48 *G. 3. c. 149.* (*which see post. vo. 5. tit. Stamp.*)

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ps;) and the act prior to this was 44 G. 3. c. 98. (*which*
te, vol. 1. tit. Apprentice.)

binson v. Dryborough. T. 35 G. 3. In this case it was
 ed that it was not sufficient for a deed to be stamped
 a stamp of the required *value*, but that the stamp must
 e of the proper *kind*, viz. a deed stamp. 6 T. R. 317.
 d in *Farr v. Price. M. 41 G. 3.* It was held, that
 though the stamp were of a *higher* value than was requi-
 till the instrument so stamped was void; and this was
 where both the stamp actually used, and that prescribed
 e act, were applicable to the same kind of instrument.
 R. 55.

Taylor v. Hague, T. 42 G. 3. A promissory note was
 ed upon a 2s. promissory note stamp, instead of one of
 d. which was the proper stamp at the time. It ap-
 d that more than sufficient of the 2s. stamp used was
 able to the respective funds to which the proper 1s. 6d.
 was appropriated. And it was held that the instru-
 was therefore valid. 2 E. R. 414.

17 & 18 G. 2. *Llanvair Dyffryn Clwyd v. Llanlidan.*
Edwards, an infant, was by his father bound apprentice
 denture, but the indenture was not stamped. And it
 uled, that the indenture, not being on stamped parch-
 or paper, could not be given in evidence at all, being
 ately void to all intents and purposes. B. S. C. 236.

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a service as an hired servant. 4 T. R. 770. 2 Bott. 377. pl. 440.

As to the presumption that the indenture has been stamped, see *post*. R. v. Knoyle, (13.)

7. Of the consideration and duty thereon.

The other stamp duty imposed upon indentures of apprenticeship in respect of the sum paid as a consideration, is regulated by the 48 G. 3. c. 149. (*which see post*. tit. Stamps, vol. 5.)

By the 8 An. c. 9. s. 32. The sum of 6d. for every twenty shillings of every sum of 50l. or under; and 1s. for every 20s. of every sum amounting to more than 50l., shall be given, paid, contracted or agreed for, with or in relation to every clerk, apprentice or servant, which shall in the kingdom of G. B. be put or placed to or with any master or mistress, to learn any profession, trade or employment, and proportionally for any greater or lesser sums, shall be paid by the said master or mistress respectively.

By s. 39. All such indentures wherein shall not be truly inserted and written the full sum and sums of money received, with, or in relation to such clerk, apprentice or servant as aforesaid, or whereupon the duties payable by this act shall not be duly paid, or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, shall be void, and not available in any court or place, or to any purpose whatever.

SECT. 45. Exempts parish and public charity apprentices from the said duties.

By s. 45. Where any thing or things not being lawful money of G. B. shall directly or indirectly be given, assigned, conveyed, delivered, contracted for, or secured to or for the use or benefit of any master or mistress, with or in respect of any such clerk, apprentice or servant; for whom a duty is chargeable by this act; the duties hereby granted shall be paid for the full value or values of such thing or things.

Guerden v. Leyland. H. 4 G. 2. On a special order of sessions it was stated, that the pauper was bound apprentice by indenture, and the master had 20s. paid him; that he served 3 years, but that the master never paid the duty of 6d. in the pound according to the 8 An. c. 9. s. 39. which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue J.* who went the circuit: And he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained, and

If the duty be not paid, the indenture is void.

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uld not be in the power of the master to defeat it by *ex post facto*. And pursuant to this opinion, the sessions t a settlement. But upon debate in the king's bench, der was quashed ; for they said, it was making the in- re good to one purpose, when the act of parliament had it void to all intents and purposes whatsoever. And h it was a hard case, they could not break through the e words of the act. 2 *Str.* 903. 2 *Seff. C.* 134. 1 *Bott.* ol. 776.

19 G. 2. *Baxter v. Fairlam.* The single question a demurrer was, Whether an indenture of an apprentice- where 6d. is mentioned to be the sum given with the ntice, be or be not void for want of the duty being paid e sum so given. By the court : No duty was ever in- d to be paid for so insignificant a sum, there being no n *England* small enough to pay it. And by the act no is required for less than 20s. 1 *Wilson*, 129. 1 *Bott.* ol. 781.

28 G. 2. *Yarmouth v. St. Margaret's in Norwich.* a pauper *William Jackson* was bound and served a seven apprenticeship in *St. Julian's, Norwich*. But it ap- d that the apprenticeship was in consideration of 6d. to the master with the said apprentice, and no duty was d to be paid for the same. It was objected, that this in- re was void to all intents and purposes. But on shew- e, the point was given up, on the authority of *Bow*

But upon payment of the duty and penalty, and a receipt thereof from the stamp office produced in evidence, the writing is made good. 8 *Mbd.* 365.

R. v. Clifton upon Dunsmore. H. 12 G. 3. *George Hammond* when about 13 years of age, was bound apprentice by indenture stamped with a treble sixpenny stamp, to *W. W.* of *Swinford*, for 7 years. The consideration money in the indenture (being 7l.) received by the master, was mentioned in the indenture to be paid by *John Bailey* of *Clifton*, being charity money left by *C. B.* widow. The indenture was not stamped with any stamp denoting 6d. in the pound to have been paid by the master for every pound of the said 7l., nor any apprentice-duty paid for any part thereof. One item of the will was, 'To *Clifton* 50l. to be given as my brother thinks fit; some of it to put out children apprentices.' — And the court held that *this* was a public charity, and that therefore the duty was not payable on the apprentice fee. *B. S. C.* 697. 1 *Bott.* 641. pl. 933.

A person bound out for a consideration bequeathed for that purpose by will, is within the meaning of the words public charity.

E. 13 G. 2. North Ovrām v. Ovenden. The mother of *Samuel Spencer* the pauper proposed to put him an apprentice to a master at *North Ovrām*, who refused to take him because he wanted cloaths; but proposed to take him if they would clothe him, or give him money to clothe him with. The grandfather of the boy said he would do so. And it was thereupon agreed, that the grandfather should pay 30s. to the master to clothe the boy withal, and that the master should take him as an apprentice. And in pursuance of that agreement, the master did lay out 30s. in clothing for the boy. And afterwards an indenture was drawn and executed by the master and the said *Samuel Spencer* the apprentice: And the 30s. agreed to be given and laid out as aforesaid was paid by the grandfather to the said master. And in consequence thereof, the said apprentice served his said master under such indenture and agreement for six years in *North Ovrām*. And in the said indenture a covenant was made and mentioned, for the said master to find clothes for the said apprentice during all the said term. But in the indenture no mention was made of the said sum of 30s. so agreed to be given as aforesaid, neither was any duty paid for the same, nor was the said indenture stamped with the additional stamp required by the 8 *An. c. 9.* to denote such sum given with the apprentice. It was urged, that the apprentice hereby gained no settlement; both because the sum given with him was not inserted in the indenture in words at length, and also because the indenture was not stamped with the said additional stamp. By the court. The not inserting in words at length the full sum received or contracted for, subjects the master to a forfeiture, but doth not make the indenture void. And upon

Where money is given by the apprentice's grandfather to the master, to clothe the boy, before he enters upon his apprenticeship; it is not such a consideration as the statute requires to be set out in the indenture.

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te of the case, the master is to be looked upon in no condition than if he had been a stranger employed as sent by the grandfather to clothe the boy: And the father was obliged to repay him, and did repay him. Nothing was before the binding, so that it amounts to more than putting a boy apprentice ready clothed. It is a premium received by the master. *The statute means given for the benefit of the master.* But he has no benefit of his 30s. He was not obliged to clothe the boy before his apprentice; and this agreement was executed when the indenture was sealed. And it was adjudged that the apprentice gained a settlement under the said indenture. *G. 125. 1 Bott. 548. pl. 778.*

St. Petros, Dartmouth. H. 31 G. 3. John Hambley father of the pauper's husband *John Hambling*, being told by the parish officers of *Towney* would give him 20s. to bind out his son an apprentice, he did so bind him out: And the agreement between *H. Hambley*, and *M. H.* a widow and the mother of an infant, from the boy was to be bound, was that he should pay the said *M. H.* 20s. as a consideration for such apprenticeship. And it did not appear that she knew of any promise made by the said parish officers to *Hambling* respecting advancing of money. *Hambling* afterwards received from her the 20s.; he paid 5s. of that sum to *M. H.* and the remainder he applied to his own use. The indenture

fact of the payment having been made to the master of the apprentice, and not to the mother, said that the money having been paid out of the public fund of the parish, was decisive.—*Grave J.* agreed. 4 T. R. 196. 1 Bott. 554.

R. v. Portsea. T. 16 G. 3. An indenture of apprenticeship covenanted 'that sufficient meat, drink, apparel of all kinds, physick, surgery, and lodging, and all other necessaries, during the said term should be found and provided for the said apprentice by the said father; for which purpose the said master was to allow him or them 4s. per week, weekly, during the said term.' There was a further covenant for deduction from this payment in case of absence or loss of time. It was objected against receiving this indenture in evidence, that the duty had not been paid for the lodging, board, physick and surgery covenanted to be found by the father. And it was answered, that the 4s. per week was an equivalent, and the additional stamp unnecessary. And the court held that this answer was sufficient; as there was nothing before them to shew that 4s. per week was not an equivalent; and they were not to presume it was not an equivalent.—And *Aston J.* hinted that the 8 An. c. 9. s. 45. which says "that where any thing or things, not being lawful money of G. B. shall directly or indirectly be given," means such other equivalents as a horse, or other valuable thing of that sort; not such an agreement as this is "to provide necessaries for a son." 1 Bott. 551. pl. 783. B. S. C. 834.

H. 30 G. 3. *R. v. Walton in Le Dale.* *Richard Cunliffe*, and his family, were removed from *Walton in Le Dale* to *Kirkham* both in *Lancashire*. On appeal it was admitted that the pauper's original settlement was in *Kirkham*, but the appellants insisted that he had gained a new settlement by apprenticeship in *Walton*; and in support of it offered in evidence an indenture of apprenticeship by which he bound himself to *Croft and Hall*, calico printers, for 7 years: The indenture contained, besides the usual covenants, a covenant on the part of the pauper, that he would provide for himself meat, drink, washing, lodging, apparel, and physick, during the term; and his masters covenanted to pay him 5s. per week for the three first years, 6s. per week for the fourth and fifth years, and 7s. per week for the sixth and seventh years. The indenture also contained a proviso that in case the pauper should be visited with sickness, and thereby rendered unable to perform his work, or should neglect the same, he should not be entitled to any wages during the time of such sickness or neglect. And in case he was not employed at the business for which he was bound, then his masters should be at liberty to reduce one half of his wages for 2 months yearly during the term. The pauper served 2 years in *Walton* under this indenture,

Apprentice covenanting to provide for himself meat, drink, &c. and the master to pay him wages; it must appear that the wages were not an equivalent.

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ture, which was written upon the proper stamp, but no additional duty was paid according to 8 *An. c. 9.* The respondents insisted that the indenture was inadmissible in evidence, and void, not only for want of a stamp for the additional duty, but also on account of the nature of the contract and the clauses contained in the indenture; but the sessions thought otherwise, and reversed the order.—*L. Kenyon Ch. J.* in the case of *Pennington v. Sudall* which has been cited, cannot be taken as an authority deciding any thing. If we were to take any thing from that case, it would rather be the reverse of what has been supposed; because the case went off on the agreement to admit the apprentice to his freedom, which could only have been done under the idea that he had served a full apprenticeship. The principal question, relative to the additional stamp duty, cannot be decided on this case, as it is now stated. I believe it is the practice at the stamp office to set a value on these sorts of benefits as a matter of course, when the indentures are carried to them. Now here the apprentice stipulated to provide himself with certain clothes, which it is said the master is bound by law to provide for him, and for which it is contended an additional stamp duty ought to have been paid, because it is a benefit to the apprentice: But on the other hand, the master was to make certain weekly payments to the apprentice. Then how can we say that those payments were not an equivalent for the maintenance, &c.? I believe they are much more. But before

the trade of a shoemaker, in which was a covenant by the father that he would, at his own charge, find and provide for his son good, comperent, and sufficient meat, drink, and lodging, on every Sunday during the said term, and would provide him with clothes and apparel of all sorts, (except working aprons and shoes,) and also washing. There was also (*inter alia*) a covenant on the part of the master to provide for the apprentice meat, drink, and lodging, (except on Sundays,) during the term. The indenture was properly executed and attested, and written on a 5s. stamp. The pauper served the four years in Church Coppenhall for six days and nights in each week, and went to his father's at Woolstanwood on every Sunday. The father expended 5l. and upwards in clothing his son, and in providing meat, drink, &c. for him on Sundays during the term; for this no additional duty was paid according to the 8 An. c. 9. — L. Kenyon Ch. J. This has been *vexata questio* ever since I came into Westminster Hall; and various opinions have been entertained upon it. It is true that if an indenture be taken to the stamp office, they will set their value upon every supposed benefit to the master for the sake of the revenue: but that is by no means decisive. The question depends on 8 An. c. 9. s. 32. 45.; the former section imposes a duty on all sums of money given with any apprentice, &c. and the latter enacts, that where any thing, not being money, shall be given, contracted for, or secured to or for the use or benefit of the master, the duty shall be paid for the full value of such thing, in such manner, &c. The latter provision was inserted for the purpose of protecting the revenue from any fraud which might otherwise be practised by the parties giving something in lieu of money. For if, as in the case put by Aston J. a horse, or other valuable thing of that sort, be given by the friends of the apprentice to the master, that must be considered to be a benefit to the master for which a duty should be paid. It occurred to me early in the argument that, in order to see what would or would not be considered as a benefit to the master, it was necessary to enquire what were the duties that resulted from the bare relation of master and apprentice. And I think that the 8 & 9 W. 3. c. 30 s. 5. throws a great deal of light upon that point; because if, from the time of the statute of Eliz. to that time, masters could not be compelled to provide for parish apprentices, and that law was made for the purpose, it shews that the obligation of providing for apprentices did not result from the mere relation of master and apprentice; for if it had, that part of the statute of W. 3. was unnecessary. The case of parish apprentices is the only one where an apprentice can be put out *volens*; all the others depend on the express stipulation to be

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le by the parties interested. It has never been held that obligation of the master extended to the providing of cloaths for the apprentice, and yet I cannot distinguish that from the obligation to provide sustenance; for the former is equally necessary with the latter; and in other cases than those of parish apprentices, cloaths are generally provided by the friends of the apprentice. But if every thing is to be paid, and a duty set upon it, from which a benefit arises to the master, it might be equally said that the earnings of the apprentice should be liable to the duty. The argument, therefore, that every benefit which the master derives from the apprentice, by proving too much, proves nothing. The authority of *Aston J.* is in all cases worth resorting to, but particularly so in cases of sessions law, in which he was remarkably conversant. And his opinion in the case alluded to is very strong to this point. I think, therefore, that the true meaning of the statute of Anne is, that where money, or money's worth, is given to the master by the friends of the apprentice by way of premium, a duty ought to be paid for it; but where meat, cloaths, &c. are to be provided by the master, no duty is payable, because there is not any thing given to the master. *Buller* and *Grose J.* delivered their opinions to the same effect. Order of sessions quashed. 4 *T. R.* 732. *10tt.* 556. *pl.* 787.

R. v. Wantage. *T.* 41 *G.* 3. The pauper *Thomas Smart* bound apprentice to *Mr. Tuck*, ropemaker, in the parish

sessions considered the indenture as void under the 8 *An. c. 9.* And in support thereof it was argued in *K. B.* that by the 35th and 39th sections of that statute, not merely the sum contracted for, but the sum *actually paid* should have been stated in the indenture, and the stamp proportioned accordingly. — *Grose J.* The act requires, (*s. 35.*) “that the full sum of money received, or in anywise directly or indirectly given, paid, agreed, or contracted for,” with the apprentice, “shall be truly inserted,” under a certain penalty: By *s. 39.* the indenture is avoided “if the sum received, given, paid, secured, or contracted for,” be not so truly inserted. By requiring the full sum to be inserted, it meant that *not less* than the sum upon which the duty was really payable, should be inserted: Here, not only the full sum, but *more* than the sum for which the duty was payable, has been inserted, and the duty paid upon such larger sum. Then, more than the act required has been complied with. — *Lawrence J.* observed, that he saw no reason why the master might not recover the remainder of the five guineas in an action. Order of sessions quashed. 5 *T. R.* 309. 1 *Bott.* 560. *pl.* 790.

still the indenture is good, and service under it will gain a settlement.

8. Of the contract.

When it is the intention of the parties to create an apprenticeship, and by reason of some defect either in the formal parts of the indenture, or in the substance of the contract, that intention fails, it cannot be converted into a contract of hiring and service, so as to gain a settlement under it. The preceding cases have shewn what are such defects of form, as will avoid an indenture (as to settlements,) and it now remains to examine in what manner the contract itself will be insufficient to create an apprenticeship. *Where the contract or instrument is defective, and an apprenticeship intended, it cannot be considered as a hiring and service.*

M. 5 G. 2. Salford v. Storeford. It was moved to quash an order of two justices confirmed at the sessions. The sessions state the case specially, that one *Linsacre* had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship in the parish of *Salford*; but that the indenture was not stamped. However, the justices judged this to be a good settlement by way of service, though not as an apprenticeship; and accordingly removed his wife and two daughters from the parish of *Storeford* to the parish of *Salford*. But the court held this to be no settlement, on the authority of *Cuerden v. Leiland*, and quashed the order. 2 *Barnardist.* 39. 2 *Bott.* 363. *pl.* 426.

Where the intention is to create an apprenticeship, and the indenture is void, it shall not enure as a service.

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5 G. 3. Whitchurch Canoncorum v. Wotton Fitzpayne. A pauper *John Gay*, being of the age of 22 years, agreed with a stone-mason that he should take the said *John Gay* apprentice for six years, to teach him the trade, and that indentures should be executed accordingly. He went and served 5 years, when they parted by consent; but no indentures were ever executed. It was contended that this was as good as a hiring and service. — But by the court: Here is no hiring expressed or implied. The objects are different, binding as an apprentice, and a hiring as a servant, cannot be converted one into the other. And the case of *The King v. St. Mary Kalendar in Winchester*, was mentioned on this point. *B. S. C. 540. 2 Bott. 368. pl. 432.*

R. v. Margram. H. 33 G. 3. The pauper's mother had made an agreement with *Mr. Tyler*, agent for the *English Copper Company*, who lived in *Margram* in the county of *Worcester*, for him to serve seven years as an apprentice, and he served in the said copper works for eight years, and then learned the trade of a refiner, and received weekly wages, also 20s. a-year, as a refiner, and he conceived himself as an apprentice, but he signed no indenture or agreement whatsoever, nor was any signed by any other person on his behalf, or to his knowledge. The court, without hearing any argument, were clearly of opinion that his servitude as an apprentice, could not be converted into a service under a hiring. *5 B. R. 100. 2 Bott. 278.*

having no child, went to *Great Bolton*, where one *William Stott*, a weaver, lived. The pauper went to *Stott*, and asked him if he would teach him to weave counterpanes; *Stott* answered, he would teach him, if he would work with him two years and an half or three years, and the pauper's earnings were to be divided between them; the pauper was to find himself with meat, drink, washing and cloaths; he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper staid and worked with *Stott* under this agreement in *Great Bolton*, about a year and a half, and then the pauper gave the master 20s. to be free, having then married. The master (whilst he was working under the agreement,) found him looms, loom-room, and materials; he never employed the pauper in any work but weaving; the condition upon which he taught the pauper to weave was one half of his earnings. *Stott* received the money, and paid the pauper one half, and looked on it that he had a right to receive it; but sometimes he let the pauper receive it. The agreement in writing was proved to be lost, and therefore parol evidence was allowed to be given of it. The removal was from *G. B.* to *Little Bolton*, and the sessions confirmed the order.

writing, but not so naming as an apprentice, it is not a contract of apprenticeship, though it be that one shall teach, and the other learn a trade, but it is a hiring and service.

In support of the order of sessions, it was argued that this was a *contract* in which it was *covenanted* that *the pauper should be taught*; and was therefore in the nature of an apprenticeship, and being so, it could not be converted into an hiring and service. — *Per Lord Mansfield C. J.* This is not a hiring and service. If an indenture were not necessary, there could be no doubt as to its being an apprenticeship; for the pauper is *to be taught*, and pays a consideration for it, and is to do no other work. — *Buller J.* agreed. The rule was then accordingly discharged, and both the orders affirmed. — Afterwards *L. Mansfield* delivered the judgment of the court. We have looked into the authorities, and we find that all those cases of apprenticeships which have been holden to be defective, and not convertible into hirings and services, speak of the pauper *as an apprentice*, and that he was to serve as such. There is no such statement here; and we are therefore of opinion that it is a good hiring and service. Rule absolute; and both orders quashed. *Cald.* 367. 2 *Bott.* 222. *pl.* 280.

R. v. Highbam. *H.* 25 *G.* 3. The pauper at 17 years of age went to *William Evans* of *St. Mary de Crespt* in *Gloucester*, carpenter, for the purpose of being his apprentice for four years, to learn the trade of a carpenter, but to save the expences of indentures and duty, (four guineas consideration being paid by the pauper to his master,) he and his master

Where the intention is to create an apprenticeship, but for fraudulent reasons the indenture is not duly completed,

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ed to sign an agreement on *unstamped paper*, which was accordingly done. Lord *Mansfield* and the court held, that it was clear that a fraud was intended; that the pauper was intended to be an apprentice and defraud the revenue; and that therefore no settlement could be gained by service under the above circumstances. 2 *Bott.* 371. *pl.* 436.

R. v. Laindon. *M.* 40 *G.* 3. Two justices removed *Claydon* from *East Horndon* in *Essex* to *Laindon* in the same county. The sessions on appeal, confirmed the order, subject to the opinion of this court on the following case; the pauper being legally settled at *Laindon*, went into the parish of *Ingrave* in *November* 1792, and after being a month upon trial with *J. Mander*, a carpenter in *East Horndon*, he entered into the following unstamped written agreement, witnessed and subscribed as under: "November 20th, 1792, I, *John Mander*, do hereby agree with *J. Claydon* to serve me three years to learn the business of a carpenter, the first year to have 1s. 2d. *per* day; the second year to have 1s. 6d. *per* day; the third year to have 1s. 10d. *per* day: witness my hand, *J. Claydon*, *J. Mander*. Witness, *Robert Beles*." The pauper proved that at the time of signing the above agreement, he agreed to give *Mander* the sum of three guineas as a premium to teach him the said trade, and paid *Mander* 1l. 15s. which, with 1l. 8s. due for wages during the month of trial, made

contradict the written agreement, but to ascertain an independent fact; and I think it was properly received in evidence. That being so, the case appears to be shortly this: in consideration of three guineas paid by the pauper, the master undertook to teach him the business of a carpenter, and the pauper was to serve three years. I am sorry that nice distinctions were ever taken in the determination of cases on this subject; but notwithstanding those little differences, we must consider the whole class of decisions on this point, and extract the principle from them. It is admitted in all of them, that *if two persons intend to enter into the relation of master and apprentice, and owing to some circumstance the relation of apprenticeship is not duly constituted, as if the indentures be not stamped, this shall not change the condition of the parties; if they cannot avail themselves of the consequences of the condition in which they intended to stand, they shall not be put into another condition in which they did not mean to place themselves.* But when it is urged that this relation can only be formed by using the term "apprentice," it may be observed that the argument would lead to an absurd consequence; for then, if the word clerk were used in regular indentures of apprenticeship, the clerk would not gain a settlement by serving under the indenture, merely because he was not retained *eo nomine* as an apprentice; but it would be a disgrace to our laws, if we were obliged to decide according to words, without considering their meaning. It was properly said by Lord Hardwicke, that "there is no magic in words;" and he said this not as a discovery just then made by him, but as a maxim that was handed down to him from his predecessors. *If the relation of master and servant be created by the contract of the parties, though they do not use the very words tantamount, it is sufficient.* In this case, a premium was paid by one man to another who engaged to teach him a trade: now, what is that, but an apprenticeship? The term "apprentice" is taken from the French word *apprendre*, to learn: Unfortunately, L. Mansfield did not adhere to his first opinion in *R. v. Little Bolton*; but even when he gave his second opinion in that case, he took it for granted that the rule remained unshaken, that if the parties intended to create the relation of master and apprentice, and it were not legally created, so that the apprentice could not gain a settlement as such, he could not acquire a settlement as a yearly servant: and in the subsequent case, *R. v. Highnam*, L. Mansfield adopted the opinion he had first given in *R. v. Little Bolton*, conformably to all the other cases. Therefore, we may rely on this last case, and if it be not distinguishable from that of *R. v. Little Bolton*, it is sufficient to say that it is subsequent to it, and that the case of *R. v.*

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Bolton is an anomalous case. When we find the current authorities one way, I should be sorry that a little inaccuracy in the court, in the decision of one case only, should be supposed to break in upon the general rule. For the case *v. Coltishall* (a) which has been cited, is distinguishable from this class of cases; there, by the agreement of the parties, the pauper was to do any work that the master set him about. I am, therefore, most clearly of opinion, that in this case the parties intended to form the relation of master and apprentice; and that as that relation was not legally created so as to give the latter a settlement as an apprentice, the relation cannot be converted into that of master and servant, so as to give him a settlement as a yearly servant. I think we should do infinite mischief, if we were to turn that which has been so long a settled rule. — *Law-J.* The first question raised by the counsel in support of the rule is, that the sessions ought not to have received the evidence, because it contradicted the written agreement; but it was not offered for that purpose, but to ascertain the collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some respects equivocal. The fact being established, the case was decided on the one hand, the pauper paid a premium to the master, and was to receive certain wages; and, on the other hand, the master engaged to teach him the business of a journeyman; then the question is, Whether or not by this

better to decide them on some general rule, that every person who reads may understand it. 8 T. R. 379. 2 Batt. 376. pl. 442.

M. 41 G. 3. R. v. Rainham. Two justices by an order removed *Moses Smith*, wife and six children, by name, from *Rainham* in *Essex* to *Eltham* in *Kent*. The sessions on appeal quashed the order, subject to the opinion of this court on the following case: The pauper, on the 8th of *November 1784*, entered into an agreement under seal with one *Hills*, a lawyer, living in *Eltham*, which agreement is in the words and figures following, viz. "An agreement made the 8th of *November 1784*, between *J. Hills* of *Eltham*, lawyer, and *M. Smith* of the same place; viz. *Smith* doth agree with the said *J. Hills* to serve him for three years from the date of the agreement in the following manner: viz. for the first year 10s. per week; for the second year 11s.; and for the third year 12s. per week; and the said *J. Hills* doth agree and promise to learn the said *M. Smith* the art and mystery of a lawyer, which he now follows: and it is likewise agreed that if *Smith* shall wilfully lose any time to the prejudice of *Hills*, he doth hereby agree to pay to *Hills* 3s. per day for all such neglect; and it is hereby further agreed, that if *Smith* repents of this agreement before the time expires, he promises to pay *Hills* 10l. on demand; or if *Smith* is sick, or by any disorder or misfortune rendered incapable of work, not to receive any pay from *Hills*." The agreement was signed and sealed and delivered by both parties, and lawfully stamped; no premium was paid by the pauper to *Hills*. The pauper, in pursuance of the agreement, immediately went to *Hills* and resided with him in *Eltham* under and according to the terms and conditions of the agreement for two years and a half.—*L. Kenyon*: The sessions have stated the deed and the service under it in fact, leaving this court to draw the conclusion: and that can only be done in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented. It has been determined, that the party serving need not be retained *eo nomine* as an apprentice; but that it is enough, if the purpose of the contract be, that the one shall teach and the other learn the trade. That is the case here; for the master engaged to learn, i. e. to teach, the pauper the art and mystery of a lawyer; and the object of the pauper was to be taught the business. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium given to the master. 1 E. R. 531. 2 Bott. 383. pl. 444.

R. v. Eccleston. E. 42 G. 3. Removal from *Little Bolton* to *Eccleston*, confirmed by the sessions. The pauper had gained

It is enough where the intention is, that an apprenticeship shall be created, to agree that one shall teach and the other be taught a trade.

A person who is verbally bound to another by

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and a settlement in *Eccleston*, and when about 15 years of age went into the township of *Tonge* with *Haulgh*, and made a verbal agreement with one *S. C.* there, who was a master of counterpanes, to serve him a year and a half. *Haulgh* was to teach him to weave counterpanes, and the master was to have one half of what he earned, and to find him in every thing. Nothing else passed between them at making the agreement. The pauper worked under this agreement with *Clough* for the year and a half; except for a fortnight, during which he remained absent; but *Clough* never brought him back into his service, and obliged him to stay a fortnight over the year and a half, in order to make up the time he had been absent from his service. During the time of his service he constantly slept at the house of his master at *Little Bolton*.—*L. Ellenborough*: I give a reluctant assent to the case of *R. v. Little Bolton*; but as the case now before us is in terms the same as is there decided, I think it better to abide by that determination, than to introduce uncertainty into this branch of the law; it being often of more importance to have the rule settled, than to determine what it shall be. I am not, however, convinced by the reasoning of that case, and if the point were new I should think differently. I should consider as *L. Kenyon* said in *R. v. Bolton*, that if the relation of master and apprentice be created by the contract of the parties, though they do not use the very words, master and apprentice, yet, if they use

orders were thereupon quashed. 2 *E. R.* 298. 2 *Bott.* 230. *pl.* 289.

9. Of residence.

St. Bride's v. St. Saviour's. *H.* 4 *An.* A woman who was settled at *St. Saviour's* with her apprentice by indenture, came and took a lodging in *St. Bride's*, and there continued above forty days with her apprentice, who served her there. This was held by the court to be a settlement of the apprentice at *St. Bride's*, though the mistress had no settlement there. 2 *Salk.* 533.

Settlement of the apprentice does not depend on that of the master.

St. John Baptist v. St. James's Bishop Cannings. *M.* 11 *G.* Binding and serving will not make a settlement, but the settlement must be by inhabiting, which cannot be but where the party lodges. 2 *L. Raym.* 1371. 1 *Str.* 594. 2 *Bott.* 387. *pl.* 450.

Residence is where the party lodges.

But in *R. v. St. Olave's Jury*. *E.* 3 *G.* An apprentice is bound to a cobbler, who keeps a stall in one parish, lies in another, and the boy in a third; and the sessions adjudge the settlement where the stall is, because the service was there. But by the court: the boy has gained no settlement in any of the three parishes, for the stall is not sufficient to give him one, the master lying in another parish. 1 *Str.* 51.

[*Note.* This case seemeth to stand alone. And by the analogy of the other cases, with respect both to apprentices and servants, it seemeth that the cobbler's apprentice gained a settlement in the parish where he lodged. A man may be occupied in several parishes in the day-time, but his home and habitation seems to be where he draws to at night.]

Castleton v. Hundersfield. *M.* 7 *G.* 3. The pauper, *John Holroyd*, was bound to a master at *Castleton* for seven years. He worked, dieted and lodged with his master in *Castleton* for four years and a half, and then married a woman who lived in *Hundersfield*. After which marriage, he worked and dieted all along with his master in *Castleton* in the day-time; but lodged at nights with his wife at her father's house in *Hundersfield*, until the expiration of his apprenticeship, which was about two years and a half from the time of his marriage. By the court clearly, he gained a settlement in *Hundersfield* where he lodged. *B. & C.* 569. 2 *Bott.* 390. *pl.* 454.

Serving by day in one parish, and sleeping by night in another,

Charles v. Knowlstone. *T.* 12 *G.* 3. *John Hodge* was bound apprentice by the parish of *Knowlstone*, to *John Fisher* of *K.* for an estate which *Fisher* rented of *Mr. L.* who had covenanted with *F.* to discharge him from any expence that he

Residence for forty days will gain a settlement though no service be per-

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might incur thereby. On *Fisher's* application as widow and representative (he being then dead) she received the parish money with him, carried him to her, and afterwards removed to the parish of *K.* where the boy resided with her about three years, and became a cripple by losing both his feet. She then sent him to *Fisher*; who received him, upon her promise to pay him all the expence he should be at in taking him, and put him to live with his (the boy's) grandfather at 8d. a-week; where he resided above for three years, when he was discharged of his apprenticeship by the court. After which, two justices removed the said boy from the parish of *K.* to the parish of *C.*, where he served out the remainder of his apprenticeship before he became disabled, and was not fit for further service, and the sessions upon petition confirmed the order. It was moved to quash these proceedings, on the ground that the pauper gained a settlement in the parish of *C.* by his forty days residence there. On shewing cause, it was argued that this was not such a residence of the pauper as could gain him a settlement. It was only a temporary residence; and like residing in a hospital, where no actual service was necessary, in order to an apprenticeship, could not gain a settlement. And therefore, this apprenticeship was in *C.*, where he performed the service during the space of three years; and where he lay ill, as a cripple, and was totally in

purpose of cure, but that the original master, who lived in the same parish and was bound to receive him, did receive and place him there.

R. v. Barnby in the Marsh. E. 46 G. 3. The pauper was removed from *Barnby in the Marsh* to *Selby*, and the sessions quashed the order. It appeared that the pauper, *J. Martindale*, was bound apprentice by indenture dated 1st April 1794 for four years to *J. B. of Hunstet*, in the west riding, who was the master of a small vessel trading on the river *Ouse*. The pauper slept more than forty nights during such apprenticeship at *Selby*, at different times, but slept the last night thereof at *Barnby*, at his grandmother's, in which latter place he had slept more than forty nights, in consequence of his being ill of a fever. He so went to *B.* with the consent of his master, who received him again as his apprentice; and he never slept there except as above stated. In support of the order of sessions the case of *R. v. Charles* (the last preceding case) was cited. But the court were all of opinion that the residence of the pauper in *B.* being on account of illness, was not a residence as an apprentice, and that the statute 3 *W. c. 11.* which directs that if any person shall be an apprentice, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement, must be understood of an inhabitation referable in some way to the apprenticeship. But that the residence here with the grandmother was no more referable to the apprenticeship than if the pauper had resided in a hospital or a prison. Order of sessions quashed. 7 *E. R.* 383.

But a residence merely on account of illness where no service is performed, will not give a settlement.

So also *R. v. Titchfield* to the same effect, (*post.* 12. this section.)

R. v. Stratford-upon-Avon. E. 49 G. 3. Removal from *Stratford-upon-Avon* to *Old Stratford*, and quashed by the sessions; who stated specially, That the pauper *T. Barnett* was bound apprentice by the parish officers of *Old Stratford*, to *H. H. of Stratford-upon-Avon*, cordwainer. Among other covenants in the indenture the pauper engaged "faithfully to serve his master in all lawful business." He lived with his master 12 months, and then, his thumb becoming affected with *scrofula*, he left his master, and went to his mother's in the adjoining parish of *Old Stratford*, where he continued till the time his master went away from *Stratford-upon-Avon*, which was about two months afterwards. He slept at his mother's house more than forty days, and he never afterwards slept in *Stratford-upon-Avon*, nor in any other place for forty days during the apprenticeship. During the whole time he so slept at his mother's, he went almost every day to his master's, and was on some days employed for three or four hours in each day by his master in going of errands, and was always ready at his master's house whenever wanted by

Where a pauper, apprentice goes into another parish on account of illness, but there occasionally serves his master, though not in his trade, a settlement is gained by forty days' residence in that parish.

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man, but was unable to work at his trade in consequence of a complaint in his thumb.

Lord *Ellenborough* C. J. The facts stated that there was a service of the master by the apprentice; he lodged at his mother's in the adjoining parish; he was to lodge there indeed in order to get cured, in pursuance of an arrangement between the master and the mother; but he continued to serve his master even though he could not work at the trade himself; he performed other service, and he might attend the work of the trade of his master; he must therefore be considered still in the service of his master as an apprentice, notwithstanding his mother. If the mother had lived near the master's house, so that he could have attended his master while he resided at his mother's house for the purpose of cure, that would have altered the case, and the case would have been decided in favor of the master, as in *the King v. Barmby in the Marsh*; there the apprentice was in the service of the master; but here the service to the master was not performed, and therefore the apprentice gained a settlement by his forty days' residence in the parish where he lived with his mother. The other judges agreed, and Lord *Ellenborough* said, "while an apprentice continues serving, all his settlement is in the parish where he lodges, and where the service is performed." 11 E. R. 176. *Mary Colechurch v. Radcliffe*. T. 3 G. A. 1. An apprentice to a sea-faring man, and served

December 7, 1760, she arrived there, and continued there till January 22, 1761, being more than forty days, the apprentice during those forty days lodging, boarding and serving his master on board the ship: and the ship was never in any other port forty days after that term. On March 11, 1761, the ship returned to *Bridport* harbour, and there remained till after the 28th of that month, on which day the apprenticeship expired: and during that time the pauper lodged, boarded and served on board the ship as before. *Bridport* harbour is a bason within the parish of *Burton Bradstock*, and communicates with the sea by a cut made from it to the sea; and through this cut ships enter.—Per *L. Mansfield C. J.* Lying in a parish is the same whether it be on board a ship, or on land. Casual residences, or accidental inhabitancies are out of the present case. The harbour is stated to be within the parish of *Burton Bradstock*, and the service was *bonâ fide* performed there. — *Yates J.* said that this was not like the case of a vagabond strolling from parish to parish. *Aston J.* agreed, and said that he thought mere watching on board a ship was not a residence within 3 & 4 W. & M. c. 11. Nor would a vessel in transitu, accidentally stopping at a port to repair a leak, or any such casual occasion, gain a settlement to the sailors on board. *B. S. C.* 531. 2 *Bott.* 389. pl. 453.

R. v. Topsham. T. 46 G. 3. The pauper J. C. at the age of 12 years was bound by indenture apprentice as a mariner to D. S. of *Topsham*, ship owner and coal-merchant. He served his said master for three years, during which he made several voyages, and returned to *Topsham*; residing there in the intervals between the voyages, sometimes for two months. His last voyage was on board the *Reward of Topsham*, which first sailed to *Shields*, and from thence to *Poole*, with a cargo of coals. The pauper remained at *P.* upwards of forty days, and slept every night during that time on board the said vessel, as it lay along-side the quay. He knew whilst there that his master was become a bankrupt, and gone from *Topsham*: in consequence of which he applied to Mr. Penny, the agent and consignee of the vessel, for money, to enable him to return to *Topsham*, who supplied him with half a guinea for that purpose. On his arrival at *Topsham* he resided with his uncle, not being able to find his master, whom he had never seen or served since. The removal was from *Topsham* to the parish of *Poole*, or town and county of *Poole*, and the order was quashed by the sessions. In support of the order of sessions, it was contended, that the residence of the apprentice at *Poole*, was only accidental; that in *R. v. Burton Bradstock* (ante) the fact relied on was, that *Bridport* harbour was in that parish, and that the pauper's return to *Topsham* by the

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assistance of his master's agent at *P.* and his subsequent inuance there, fixed his settlement in that parish. But *court* agreed, that the residence at *P.* was not casual, but he was there in the actual employ of his master in his e, which in its nature required a shifting residence. That principal doubt in *R. v. Burton Bradstock*, was, whether residence of an apprentice on ship-board were equivalent residence on shore in the same parish, and what was wn out there in respect of *Bridport* harbour being the e of the ship, was principally in answer to that objection.

that the doctrine of casual residence, as applied to es of public resort, which had been thrown out in the *borough* case, had been pretty much shaken in the subse- at case of *R. v. Bath Easton*. That at any rate, however, doctrine did not apply to a case like the present, where apprentice was in the actual service of his master at the . And that it was clear an apprentice might gain a ement, by serving his master in another parish, where his er's business called him. That it appeared also, by the , that the apprentice never returned to his master's service he parish of *Topsham*, for his master had absconded before return, and he went to his uncle; and it is expressly d, that he never saw or served his master afterwards. — er of sessions quashed. 7 *E. R.* 466.

10 *G. R. v. Cirencester*. An apprentice bound in

servants and apprentices could not be supported, but that they should both fall within the same rule, and that the cases of *R. v. Lowes* and *R. v. Hulland* governed this case, where it was determined, That when a servant lives with his master 40 days in one parish, and then 40 days in another, and then returns and stays one day in the former parish, his settlement will be there. — And *Asbust* J. said the settlement is shifting until the end of the year, and is at last fixed where the servant sleeps the last night, if there be a residence for 40 days in that parish in the whole. Both orders quashed. 5 T. R. 188. 2 Bott. 393. pl. 457.

10. *Service with different masters.*

M. 3 G. Holy Trinity v. Shoreditch. — *Parker* Ch. J. delivered the resolution of the court: This is an order for the removal of one *Ferrer* from the parish of *Holy Trinity* to *Shoreditch*; by which it appears that *Ferrer* was bound an apprentice to one *Truby*, with intent that he should serve *Green*; which he did for three years: And it hath been insisted that he being bound to *Truby*, who lives in *Trinity* parish, his settlement is there; and not in *Shoreditch*, where the service was. But we are of opinion the justices have done right in sending him to *Shoreditch*, where the service actually was. It is the same thing as if *Truby* had turned him over to *Green*; in which case there would have been no question but he had gained a settlement in *Green's* parish. 1 Str. 10. 2 Bott. 405. pl. 470.

Apprentice serving another master with the consent of the first master.

E. 9 G. St. Olave's v. All Hallows. A person is bound apprentice to a master who lives in *St. Olave's*. Afterwards, the apprentice by his master's verbal consent, lived with and served another person in *All Hallows*. — By the court: He gains a settlement in the last place; for a person may serve his master in another parish or place; and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master. *Cases of S. 153.* 1 Str. 554. 2 Bott. 406. pl. 471.

M. 8 G. 2. R. v. St. George's, Hanover square. *Alice Wheeler* was bound by indenture a parish apprentice to *George Leicester*, in the parish of *St. George's*, where she lived above 40 days under the indenture, and gained a settlement. Afterwards she was by parol agreement hired out by the said master to one *Hall* in the parish of *St. Mary le Bone*, and there lived and lodged above 40 days, that is, for the space of one year and upwards, the said apprenticeship continuing; and the said *George Leicester* her master received her wages, and found her cloaths. — By the court: The

apprentice is well settled in *St. Mary le Bone*. 2 *Seff. C.* 138. 2 *Str.* 1001. *B. S. C.* 12. 2 *Bott.* 406. *pl.* 472.

E. 30 *G.* 2. *Fremington v. Sherwell.* *Mary Bevans* the pauper was bound a parish apprentice to one *Richards* in *Fremington*; who, after some time, declared that he had no business for her; and gave her permission to go and work elsewhere, where she would, for her own benefit; and on his recommendation she was hired to one *Mr. Nott* at *Sherwell*, from the first day of *June* till *Lady-day*, and served him there for the wages of 32s.; and then went back to her master, with whom she stayed eight days, and then the term of her apprenticeship expired. This was held to be a good settlement at *Sherwell*, for she was not discharged from her apprenticeship nor intended to be so. Her master only gave her leave to go elsewhere and serve another person, for her own benefit. She did so and afterwards she returned to her master, and was received by him, and stayed with him to the end of her term. And consequently, the service with *Mr. Nott* in *Sherwell* was a continuation of the apprenticeship, and performed under it. *B. S. C.* 416. 2 *Bott.* 409. *pl.* 476.

A settlement is gained by a service with a third master under the express consent of the second to whom the first assigned the apprentice.

R. v. Tavistock. *E.* 7 *G.* 3. The pauper was bound an apprentice by the parish of *Lamerton*, to *R. R.* with whom he lived several years in that parish; and then *Rundle* transferred him, by assignment, to *John Prout* of *Milton Abbot*, with whom he lived till he was 20 years and a half old, at which time he offered his service to *T. M.* of the parish of *Kelly*. *M.* apprehending that he was an apprentice to *P.* sent his two sons to *P.* to know whether it was with his consent that the pauper should live with him. To which *P.* answered, "With all my heart; he may live with *M.* or any body else, provided he performs his agreement with me." Accordingly he lived with *M.* in the parish of *K.* for a year and upwards. He was removed from *Tavistock* to *Kelly*, and the sessions vacated the order. — *Lord Mansfield.* The only question is, Whether *Prout* consented? It is clear that he did consent, and his consent included that of the first master. — *Aston J.* said, that a second assignment was good, as appeared by *R. v. East Bridgeford.* *B. S. C.* 578. 2 *Bott.* 412. *pl.* 479.

There must be by the master an express consent to serve a particular person, mere knowledge is not enough.

E. 30 *G.* 3. *R. v. Holy Trinity in the Minories.* *Frances Whitfield*, wife of *Joshua Whitfield*, (a patient in *Guy's* hospital,) with her three children, were removed from *St. Mary Magdalen, Bermondsey*, to the *Holy Trinity* in the *Minories*; the sessions confirmed the order, subject to the opinion of the court on a case, stating, That *Joshua Whitfield* was bound an apprentice to *John Grimes* of *Tower Hill, London*, tailor, (being

(being a place within neither of the said parishes,) for seven years. He served his master about six years of the term, when his master declined business, and informed the pauper that he wished him to get another master for his good. He then went home to his father, who lived in *St. Olave's Southwark*, with whom he stayed three or four weeks, and if he could have got a service in that time he would have taken it; but not meeting with any, he returned to *Grimes*, who thereupon told him that he heard *Mr. Edwards* (who was also a tailor and lived in *Holy Trinity*) wanted a man; and told him to go to *Edwards*, and make an agreement with him for his good; and that he understood *Edwards* would take him for twelve months. He accordingly went to *Edwards*, and entered into an agreement with him in writing, and under seal, covenanting to serve him for twelve months in his business of a tailor; and *Edwards* covenanted to instruct him in that business, and find him in victuals, drink, and lodging, and at the end of the term to pay him 12l. in consideration of his service. The agreement was not stamped. He was nineteen years of age when he left *Grimes*; and the indentures were not assigned or cancelled; but *after he had served Edwards two months*, *Grimes gave him up his indentures*, and he continued to serve *Edwards* to the end of the year, and then received his wages, and applied them to his own use. The question was, Whether he gained a settlement by his service with *Edwards* in the *Holy Trinity*? — *L. Kenyon Ch. J.* It is extremely clear, that while the indentures of apprenticeship continue in force, the apprentice is not *sui juris*, and cannot gain a settlement as a servant. But it has been settled in the case of *R. v. St. George, Hanover-square*, that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master 40 days. The cases which have been decided upon this subject, have been determined on nice distinctions; but still these distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is the last case of *R. v. Fremington*, where it was held that the apprentice gained a settlement by serving the second master with the *consent of the first*. The case on the other side is that of *R. v. St. Luke's, Middlesex*, where a *general licence given by the master to the apprentice to serve whom he would*, without any consent to serve any person in particular, was held not sufficient to gain a settlement. Now this case falls within the principle of the former of these; for the apprentice went not only with the consent, but with the express recommendation, of the first master to serve the

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and, and he went there to follow the same trade which first master had exercised. It has been said that this case be governed by that of *R. v. Sandford*: but there is a distinction between that case and the present. For there master gave up the indentures previous to the pauper's going into the second service; but *here the indentures were given up till more than 40 days had elapsed after the apprentice had served the second master*; and that is sufficient to give him a settlement in that parish. Supposing this question were to arise in another shape, and that the pauper were prosecuted for exercising his trade without having served apprenticeship according to the statute, there is no doubt that the service with the second master would be deemed service under the indentures previous to the time of their being delivered up. — *Buller J.* The pauper could gain no settlement by living as a hired servant with *Edwards*, because indentures of apprenticeship still existed; and the only question is, Whether the master did *expressly consent* to that service or not? For all the cases shew that *mere knowledge* is insufficient; knowledge does not imply consent. Now there was an express consent and recommendation of the first master to serve the second, and then the case comes precisely in that of *R. v. Fremington*. If indeed the apprentice had not gone into *Edwards's* service, he would not have

had his consent to serve any other master. The pauper then left *Weeks* and hired himself to *R. T.* of *Beerferris* for one year. He served the year and received his wages, and then married, and went to live in *Llandulph*, where he has since resided. During the time that he lived in *Beerferris* with *R. T.* he frequently saw *W.* who knew that he was in the service of *T.*; but *W.* had never given any particular consent to this service with *T.*, or to his serving any particular person; but he told him at parting he would think no more of him. It also appeared on the examination of *T.* that the pauper had hired himself to him for one year, for 6l. 10s. *per* year, and served out his year; that he was then 21 years of age, and the time of his apprenticeship not expired; that when the pauper had been in his service 8 months, he (*T.*) met *W.* by accident, who said, "I find you have an apprentice of mine;" to which *T.* answered, "I do not know I have;" and that *Weeks* then said, "*J. Dingle* is my apprentice, but you are welcome to keep him as long as you please, for I shall think no more of him." The pauper continued in his service with *T.* 4 months after this conversation had passed, and at the expiration of his year, he received the full year's wages. The court being of opinion that this conversation was a sufficient consent on the part of *W.* to the service of his apprentice with *T.* under the said indentures, both the orders were quashed without argument. 2 *Bott.* 422. pl. 489.

Chudley v. Ideford. H. 16 G. 3. *Mary Street* the pauper was legally bound apprentice by the parish officers of *Chudley* to *Philip Matthews* of that place, till 21, or day of marriage, and lived with him there four years; when he assigned her, by parol, to *Joseph Stelliford* of *Ideford*; with whom she lived seven months; when she ran away from *Stelliford*, and returned to *Chudley*, and resided there for nine months as a servant to *John Hayes*, at a public house, with the knowledge, but without any express consent of *Matthews* or *Stelliford*; and *John Hayes* did not know that the pauper was an apprentice. *Matthews*, the original master, resided in *Chudley* during the time that the pauper lived with *Hayes*, and frequently saw her there, and applied to *Stelliford* to take her back to *Ideford*, and threatened to put him to trouble if he did not. During the time that she was at *Chudley* as aforesaid, she was taken ill, and part of the time so ill, in the work-house, that she could not be removed, and was then relieved by *Stelliford* in the workhouse there. She never returned to *Ideford*; but continued for the last two years of her apprenticeship in *Chudley* in good health, where the apprenticeship expired. It was argued, that the pauper's service at *Chudley* after her return from *Ideford*, was

The mere knowledge of the master is not sufficient.

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ee under the apprenticeship ; being by consent of her *Stelliford*, who manifestly considered her as his apprentice whilst she resided there. — But by *L. Mansfield* : is no consent of the master, either express or implied : ere knowledge of it doth not imply his consent. And hole court were unanimous, that no settlement was at *Chudley* after the pauper's return from *Ideford*. C. 821. 2 *Bott.* 415. pl. 483.

Luke's in *Middlesex* v. *St. Leonard's, Shoreditch*. G. 3. The pauper *William Hutchins* was bound an apprentice to one *Frost*, a shoe-maker, in *Southwark*, age of 24, and served him there three years. The then removed to the parish of *St. Luke* in *Middlesex*, the apprentice with him, where he served four years. master then told him to go about his business, and work for f; but the indentures were not cancelled, nor given up. pauper hired himself as a journeyman to several masters e same trade in different parishes ; and believed the did not know what master he worked with after he im, nor ever called upon him to account for what y he earned, and the pauper applied the same to his use. He worked and lodged the last 40 days before ained the age of 24 years, in the parish of *St. Leonard's, ditch*. The question was, Whether he gained a settlement at *St. Leonard's* by this service ? — By *L. Mansfield*. and

pleased. Afterwards and before leaving his master, one *Haydon* came to inform the pauper that one *Underbill*, who wanted a boy, was at an inn in the neighbourhood of his master's house, and that he should go to the inn. As the pauper was going out of the house, his master met him, and asked him where he was going? The pauper told him he was going down to *Underbill*. *Matthews* said, "he might go there, or where he pleased." Thereupon the pauper left *Matthews's* house, and went and hired himself and lived with *Underbill* above 40 days in the parish of *Sampford Courtenay*, but no communication appeared to have taken place between the original master and *Underbill*. The question submitted by the sessions was, Whether this were such an assent of the original master to the apprentice serving *Underbill* as enabled the apprentice to gain a settlement in *Sampford Courtenay*, by his service with *Underbill* there. — *L. Kenyon C. J.* The service with *Underbill* was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable if they were to be decided again *de novo*; but we are to be governed by the general principle resulting from them, and not by particular expressions, which vary in every case: It would have been better perhaps to have confined the power of gaining a settlement to a service with the original master. The case of *R. v. St. George's, Hanover-square*, [*ante*,] first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has issued such a train of decisions as it is difficult to follow; however, the general principle of them all is to be found in *R. v. Austry*, [*post*.] where *L. Mansfield* said, that in order to gain a settlement by the apprentice serving another master, there must be "an express and "implicit leave and consent given by the master to the particular service," so as to be considered as "a service of his master under the indenture," and not, as he observed in that case, "a leave intended to be quite general;" or as here, a general quitting of the service, and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased, and then somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to *Underbill*, on which the master repeats in effect what he had before said, that he might go there, or where he pleased; meaning that he no longer looked for his service, or took any concern how he disposed of himself. — *Grose J.* There must be a particular consent of the original master to the service with another, in order

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ve a settlement. In *R. v. The Holy Trinity* in the
ries, there was a particular recommendation to a par-
r service, which the court held sufficient for that
se. Whether there be such a particular assent of the
al master to the subsequent service is more a question of
han of law, and here the sessions have in effect nega-
that fact, by finding that the pauper gained no settle-
by the service with the second master. Order of
ns confirmed. 1 *E. R.* 63. 2 *Bott.* 426. *pl.* 492.

also it was held in *Notton v. Roystone.* *M. 9 G. 3.*
C. 629. 2 *Bott.* 412. *pl.* 480.

v. St. Helen Stonegate. *H. 41 G. 3.* Removal from
aints, *Peaseholme*, to *St. Helen, Stonegate*, and confirmed
e sessions. The pauper on 1st of *January* 1786, was
d for seven years to *T. M. of Thirsk*, bricklayer, with
onsent of his brother *W. C.* his father and mother being
both dead. At the end of three years and a half, the
er ran away; and afterwards his master assigned him
arol to *W. C.* with whom he afterwards lodged for
t three years, and during the last two years of that
he slept in *St. Helen, Stonegate.* About the end of the
1792, the pauper being about to marry, applied to
C. and told him he wished to work and provide for him-
to which *C.* consented, and said he might do the best
ould for himself; he did not afterwards consider him

the county of *Devon*; the sessions on appeal, quashed the order, subject to the opinion of this court, on the following case: *John Bassett* the pauper, was bound at seven years of age by a parish indenture to *William Trick* of *Bradford* till the age of 24. *Trick* assigned the apprentice seven years afterwards to *John Sleeman* of the same parish, with whom he lived there till *Lady day* 1780, when two months were wanting of the expiration of the apprenticeship. He then proposed to *Sleeman* to let him off the remainder of his time, which he at first refused to do. The pauper then offered to give *Sleeman* a guinea if he would let him off, which *Sleeman* agreed to do, and also to give him a new suit of cloaths when the guinea was paid: The guinea was not paid to *Sleeman*, nor did *Sleeman* give the pauper the cloaths; nor were the indentures given up or cancelled. On the morning of the *Lady-day* above mentioned the pauper went away and offered to serve one *Brent*, who refused to employ him, conceiving him to be an apprentice. The same day he went to one *Battisbill*, a blacksmith in *Shebbear*, who said he would not take him without *Sleeman's* consent. The pauper then went to *Sleeman* and told him what *Battisbill* had said; *Sleeman* then replied, "You may go with all my heart. I think it will be a good thing for you to learn the trade." On his telling *Battisbill* what *Sleeman* had said, *Battisbill* agreed with him; and he lived with him in *Shebbear* for the last 40 days and upwards, before he attained the age of 24. — *L. Kenyon Ch. J.* This case is very distinguishable from that of *R. v. Crediton*, which we decided a few days ago: and upon the same ground on which we there held that no settlement had been gained as an apprentice by the subsequent service, I think it is as clear, that the sessions have drawn the right conclusion in this case in adjudging that a settlement was gained by the service with the second master. There is no doubt but that the indentures still subsisted in point of law, not having been delivered up or cancelled, or any consideration paid for doing so. In the former case we were satisfied that the master did not really mean to give a particular assent to the second service; he had there told the apprentice to go where he pleased, having no further occasion for him, and when the apprentice told him where he was going, he answered that he might go there or any where else. But here the master was applied to for his consent to the particular person named; and he expressed his approbation of the apprentice going there, telling him that it would be advantageous to him to learn the trade. This then was not an indiscriminate leave to serve any person; but a particular consent to a particular service; and this is the plain line of distinction between all the cases; which it is to be hoped

the apprentice serving such service to gain a settlement by it, though the apprentice give the master a guinea to be let off the remainder of his time.

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d will make an end of all such questions in future; it would have been more correct for the sessions to find the fact of such particular consent, instead of assuming the evidence of it, as they have done; and if they were likely to turn upon it in this case, it should have been referred to them again to find that fact. But I do not think any advantage could accrue from thence to the result. In effect the sessions have drawn that conclusion from these premises I do not see how they can draw any other. 1 *E.R.* 73. 2 *Bott.* 427. *pl.* 49. *v. Bradninch.* *T.* 21 *G.* 3. The pauper was bound apprentice by that parish to a man 14 years of age; he continued to live with him till he was 21, when his master agreed, that if he would give him one guinea in hand, and two guineas more, (being one guinea a year,) during the residue of his apprenticeship, he should go, and serve where he pleased; but he refused, that he would not deliver the indenture, nor be discharged from his apprenticeship, for he considered himself as apprentice still; the pauper agreed to this, and gave him one guinea in hand, and went into the parish to live, and lived with his father, and paid him 6d. a week for lodging. He hired himself as a labourer to 10s. a day, and continued to lodge with his father at 6d. a week till the expiration of his appren-

bound apprentice by indentures for five years, to *Joseph Cooke* of *St. Botolph, London*, with whom she continued a year and a half, when having staid out all night, on her return, *Cooke* and his wife told her she was no longer their apprentice, and might go and look for another place, and gave her money to go to a register office, to look for a place. After this she continued a week with her said master, when hearing of a place, she agreed to hire herself as a servant to *Mr. Harvey* of the parish of *St. Saviour*, at 40s. a year. *Mr. H.* came to *Cooke* and inquired her character, which turning out satisfactory, he hired her on the above terms: in this service she continued to live nine months in the parish of *St. S.* The pauper at this time was under 21 years of age; but when she left *Mr. C.* the indentures were not delivered up nor cancelled; but *Mrs. C.* told her the indentures were destroyed; this was not true as to both parts, one of them having being read in evidence. The pauper went afterwards to a friend's house at *Lambeth*, where she lived on charity, but not as a servant; from thence she hired herself as a servant to a *Mr. L.* of *St. Stephen, Walbrook*, at 5l. per ann. without the knowledge of *Mr. Cooke*, where she lived three months. During this service she visited *Mrs. C.*, her first mistress, and acquainted her where she was, who said she was glad of it. The removal was from *St. Mary, Lambeth* to *St. Saviour's, Southwark*, and was quashed by the sessions.—*Lord Mansfield*. The indentures still subsist, and the power over the servant continues; then the question is, Whether the master consented? The character was *as servant*?—And *Buller J.* said the case of *R. v. Ideford* was directly in point. Order of sessions quashed. 2 Bott. 419. pl. 487.

R. v. East Bridgeford. T. 13 G. 2. Thomas Alt was bound apprentice by indentures to *William Henston* of *Orston*, webster, for nine years, and duly served him the first four years of the term at *O.* *H.* then dying intestate and insolvent, his widow, without any administration taken out, assigned him over to *Edward George* of *Staunton*, webster, a certificate man, for the remainder of the term, in consideration of 3l. paid to her by *George*; and pursuant thereto he lived with and served *George* about a year and a half at *S.*; and then *G.* in consideration of 40s. paid him by *Thomas Baggaley* of *East Bridgeford*, webster, did with the consent of *Alt*, assign him over, by verbal agreement, to *Baggaley* for the remainder of the term of nine years; and he accordingly lived and served out the remainder of the term with *B.* at *East Bridgeford*. The removal was from *O.* to *East B.*, and was confirmed by the sessions. The objection to the order was, that the widow had not taken out letters of administration, and

it is sufficient, though the apprentice hire herself as servant.

If an apprentice be by parol transferred by the widow of his master, (not having taken out letters of administration,) service with the second master will be a service under the indenture.

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had no authority to make such assignment. The whole
 t were unanimous, that this was a good settlement in
 2. where the apprentice lived about 40 days with *B. g.*
 . Since to this assignment, though only a verbal one,
 e was the consent of all the parties concerned, and he
 and inhabited at *E. B.* under the terms of the appren-
 hip, as an apprentice bound according to the act of
 ament. And they observed that an assignment of an
 entice is not considered a strictly legal transaction;
 ause the person of a man is not strictly and legally
 nable;) but it has been an equitable construction, that
 re an apprentice has lived 40 days under an assignment,
 hall thereby gain a settlement, because of the *consent.*

C. 133. 2 Bott. 407. pl. 473.

Ottertoun v. Stockland. H. 19 G. 3. The pauper was bound
 entice by the parish officers of *Stockland* to *John Davis*
 at same parish, till 24 years of age. He lived with him
 years in that parish under the indenture, when his
 er died. He continued with his master's son, who was
 executor, and had proved the will, for about seven years
 at parish, when being desirous of living with his uncle
 e parish of *Ottertoun* to learn the trade of a miller, his
 e and he applied to the executor for his consent, who
 his consent accordingly. The pauper thereupon went
 s uncle in the parish of *Ottertoun*, and continued there

apprentice is not strictly assignable, nor transmissible, yet if he continue with the consent of all parties, and his own, it is a continuation of the apprenticeship. The case of *East B.* is much stronger than this. *Dougl.* 69. *Cald.* 60. 2 *Bott.* 416. *pl.* 484.

11. Of service under assignment of indenture.

E. G. 2. *St. Olave's v. All Hallows.* If a master assign over his apprentice, and the apprentice serve in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serve with one master or another, for he still serves by virtue of the first indenture. 1 *Seff.* C. 215.

Apprentice assigned.

T. 19 *G.* 2. *Petrox v. Stoke Fleming.* *Anne Giles*, the pauper, was bound a parish apprentice to *Rebecca Gregory* of *St. Petrox*, till her age of 21. She served there five years; when the said *Rebecca Gregory*, by indorsement on the indenture, delivered up the said indenture, together with all her right, interest, and term of years then to come and unexpired, of the said apprentice, to *Philip Foale* of *Stoke Fleming*. And on the same day, the said *Anne Giles*, being then of the age of fourteen years, did voluntarily bind herself apprentice by indenture to the said *Philip Foale*; and served him under the said indenture at *Stoke Fleming* for several years. The question was, Whether a settlement hereby was gained at *Stoke Fleming*? It was objected, That here was no regular assignment of the first indenture to *Philip Foale*, it being only delivered up, but not assigned. And the term was not expired when she bound herself to *Philip Foale*. By the court: Though an assignment of an apprentice (except in *London*, by custom) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement; for the service continued under the first binding. *B. S. C.* 250. 2 *Bott.* 407. *pl.* 574.

Apprentice assigned by indorsement on the indenture to a second master gains a settlement by serving him.

M. 36 *G.* 3. *R. v. St. Paul's, Bedford.* *C. Page* and his family were removed from *St. Paul's, Bedford*, to *Kempston*. On appeal, the sessions quashed the order, and stated the following case:—The pauper was bound an apprentice for seven years to *W. Robinson* of *Kempston*, cordwainer; he served *Robinson* in *Kempston* near five years, when they removed together to *Biddenham*, where the apprentice continued with his master near a year, when his master died. About six weeks after, an agreement was entered into between *S. Negus*, executrix of *W. Robinson*, with *J. Robinson*, which was indorsed on the indenture, by which *Negus* assigned over

But to enable an apprentice to gain a settlement by serving a second master, the agreement must be proved, and if such proof is by an indorsement on the indenture or other writing, the same must be stamped, or cannot be the

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apprentice to *J. Robinson* for the remainder of the term, *J. Robinson* agreed to teach the apprentice the same trade, to provide for him to the end of the term. This agreement was signed by *Negus* and *J. Robinson*, but not stamped. Immediately after the assignment, the pauper went into the house of *J. Robinson* in *Kempston*, and continued there near a year. The indenture being proved, the respondents offered the written agreement in evidence, which the justices rejected, because it was not stamped; they then offered evidence of the verbal agreement between *Negus* and *Robinson*, that the pauper should serve the remainder of the term of seven years with *J. Robinson*, and the pauper's consent; this evidence was also rejected.—*L. Kenyon* Ch. J. has been settled ever since the case of *R. v. St. George overf-quare*, that if an apprentice serve a second master says with the express consent of the first, he gains a settlement in the parish where that service is performed; the first master, has not indeed the absolute control over the apprentice so as to compel him to go to any part of the kingdom, to serve another master, but if he do serve a second with the consent of the first, it is sufficient; it must be with the consent of the first master, for it has been decided, that his mere knowledge of such service will not answer the purpose. The question here is a question on evidence. Whether the execution of the master did or did not consent to the service with

rejecting the agreement, and if so, there was no evidence to shew any consent that the apprentice served the second master with the consent of the executrix of the first. — *Grose and Lawrence* Js. of the same opinion. Order of sessions confirmed. 6 T. R. 452. 2 Bott. 425. pl. 491.

And see the cases of *East Knoyle* and *Feffont Magna*, &c. *post.*

E. 20 G. 2. Clapham v. Austwick. Michael Wilson the pauper, was bound a parish apprentice to one Thomas Jackson of Austwick, tenant to the Reverend Mr. Jackson of Clapham, who had covenanted to indemnify his tenant against all parish charges. Thomas Jackson carried him to his landlord together with the indenture; who accepted, received, and provided for him. He desired the mother to provide for the boy; who did so, for three years, in Austwick; and the Reverend Mr. Jackson paid her 20s. a year. Then he lived with him in Clapham eight weeks, and then ran away to his mother, and remained a quarter of a year with her in Austwick, and the Reverend Mr. Jackson consented to his being there. Then the pauper was placed with his brother, a mason, in Austwick, as an apprentice, by the Reverend Mr. Jackson, who gave him a new suit of cloaths. And he served his brother, as an apprentice, a twelvemonth or two, in Austwick; who took him as an apprentice, and quitted the Reverend Mr. Jackson of him. But the representatives of the first master (who was then dead) knew nothing of this, nor ever assented to it; nor any thing of his living with his mother. — By *Lee C. J.* and the court: The statute only requires a binding by indenture, and gives a settlement where the last forty days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This, therefore, must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with the Reverend Mr. Jackson at Clapham, the settlement had been there. But a settlement is fixed at Austwick, by the boy's living there a quarter of a year, with the consent of his master, and after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding. *B. S. C. 226. 2 Bott. 408. pl. 475.*

Apprentice and indenture delivered to a second master, and by him placed with a third master, gains a settlement.

E. 7 G. 3. Tavistock v. Kelly. Rosamond Cook, a poor boy, was bound a parish apprentice to Richard Rundle at Lemerton, *Apprentice assigned to a father with*

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whom he lived there several years. Then *Rundle* transferred him by assignment to *John Prout* of *Milton Abbot*, whom he lived until he was twenty years and a half old, which time he offered his service to *Thomas Mason* of *Mason* apprehending he was an apprentice to *Prout*, to him to know whether it was with his consent that *Cook* should live with him. To which *Prout* answered, with all heart; he might live with *Mason* or any body else, provided he performed his agreement with him, which was, to give one guinea a year during the remainder of his apprenticeship. Accordingly he lived with *Mason* in *Kelly*, for a year and upwards. The sessions being of opinion that he had no settlement thereby, vacated the order of the two justices which removed the pauper from *Tavistock* to *Kelly*. The justices moved to quash the order of sessions; and urged, that as a parish apprentice, and an infant, he could not be transferred without the consent of the justices, and himself could give no consent; and if he could, it would not follow, that he could live in *Kelly* as an apprentice, without the consent of the first master *Rundle*, and there is no consent at all from him either express or implied. — *L. Mansfield* said: the only question is, whether *Prout* consented; and it is clear that he did consent: and his consent included that of the first master. And the order of sessions was quashed. *B. S. C.*
1 Bl. Rep. 635. *2 Batt.* 412. *pl.* 179.

Hanover Square, R. v. Tavistock, R. v. St. Petron, R. v. Clapham, and Castor v. Aicles, were cited, as cases in which parish apprentices assigned in fact, but without proper authority, nevertheless gained settlements by serving the masters to whom they were so assigned, as serving them by the consent of the original masters. And that the same principle was acted upon in the case of *R. v. East Bridgeford*.

Per Lord *Ellenborough* C. J. This instrument purports to be a new and original binding of an apprentice by indenture by *Ponsford* to *Smith*; it does not recognize or refer to the original indenture of apprenticeship as being an assignment of the apprentice under that indenture; nor does *Ponsford* thereby assume to have any right to assent to the apprentice serving another master under any former indenture, but only to bind her *de novo*. How then can I say that this was a consent on his part, that she should serve *Smith* as a continuation of the relation of apprenticeship which she had contracted before with him *Ponsford*. This would be to intend a consent contrary to what appears upon the face of the instrument to have been the intention of the contracting parties. I should be sorry to overturn the decided cases, but it appears to me that this is distinguishable from them; and that there is no case where the first master affected to bind his apprentice to another *de novo* by an original indenture, in which his consent to a service as under the former binding has been inferred: and therefore, without disturbing those cases, but leaving them as we find them, I do not think that this instrument proved the consent of *Ponsford* to the service with *Smith*, under the original binding.—*Le Blanc, J.* said that the consent must be to a service with the new master, under a recognition of the original binding.—Orders confirmed. 11 E. R. 95.

12. *Of service, the indentures being delivered up, or avoided by other acts of the parties.*

T. 21 & 22 G. 2. *St. Mary Kalendar's v. St. Michael's*. Indenture being exchanged between the master and apprentice, he cannot afterwards gain a settlement by serving another master with the knowledge of the first. The exchange is virtually a cancelling of the indentures.

John Miles, the pauper, was bound by indenture an apprentice for seven years, to *John Gregory* of *St. Michael's*; and under that indenture lived with the said *John Gregory*, and served in *St. Michael's* for five years; and at the end of five years left his said master; and the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. And about one year afterwards, the father of the said *John Miles* contracted with *William Stockdale* of *Twyford* for binding the said *John Miles* apprentice to the said *William Stockdale* for four years; and in consequence of that agreement, the said *John Miles* went to the said *William Stockdale* on trial, and lived with him in *Twyford*.

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the master, who was to keep the indentures until that sum paid, the master all this time keeping a control over the indenture; the pauper then went into different situations, among the rest he served a person of the name of *Cherry*, whose service he went at the recommendation and with knowledge of his first master, the indentures still continuing in force; then according to all the authorities this must be deemed a service under the indentures. My opinion in this case does not proceed on the ground that the pauper served *Cherry* a year as a hired servant, but that he served him under the indentures of apprenticeship with the consent of his original master. Order of sessions affirmed. 8 T. R. 108. 11. 404. pl. 469.

14 G. 3. *Chilvers Cotton v. Weddington*. The pauper was *Lawrence*, was born in the parish of *Chilvers Cotton*, where his father then resided under a certificate from the parish of *Weddington*. When the pauper was of the age of 14 years and a half he bound himself apprentice by indenture, with his father's consent, (who was party to the indenture) to *William Meigh* of the said parish of *Chilvers Cotton* for seven years, and served him there one year and a half, and the indenture was destroyed, by consent of the master, father and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to *Thomas Maydlin* of the parish of *Bulk-*

be defeated, if the master and parish infant apprentice could, by their joint consent alone, without the consent of the parish officers, discharge such a contract, and set the apprentice free from it. That case, therefore, is not applicable to the present. Here, the original contract was only between the father, the master and the apprentice; and all of them consent to the discharge. An infant may make his condition better, though he cannot make it worse. The reason why an infant may bind himself apprentice is, because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another. *B. S. C. 766. 2 Bott. 398. pl. 464.*

R. v. Hindringham. H. 36 G. 3. H. Beck and his wife and family were removed from *Hindringham* to *Blakeney*; The sessions quashed the order, and stated the following case. The pauper, in *March* 1780, being aged 17, bound himself an apprentice to *F. Wells*, then of *Blakeney*, mariner, for four years, and resided there under his indentures above forty days. When he had been an apprentice about 13 or 14 months, he went on shore at *Barlington Bay*, and meeting with a press gang, entered as a sailor, with the consent of his master, but the indentures were neither delivered up nor cancelled during the apprenticeship. He continued in the king's service about two years, and was then discharged, when he went to his father's house at *Bale* in *Norfolk*, and continued there for some weeks. At *Whitsuntide* 1783, he hired himself to *A. Wilson* of *Hindringham*, till the *Michaelmas* following, when he hired himself again to the said *Wilson* for a year, which he also served in *H.* and on the second of *March* in that year, the apprenticeship expired.—By *L. Kenyon C. J.* There is no ground for saying that the apprentice did any act to put an end to the indentures when he entered into the king's service. But I desire it may not be taken for granted that an infant who binds himself apprentice, a contract so notoriously for his own benefit, may put an end to that contract at any time during his minority. I enter my protest against discussing that question now: it will be sufficient to determine it when it necessarily arises. (*See Ashroft v. Bertles. 2 Bott. 403. pl. 468.*) In this case the pauper bound himself to *Wells* by indenture, under which he served in *Blakeney* more than forty days; afterwards when he was pressed into the king's service, he agreed to go as a volunteer with the consent of his master, evidently implying that he did not then put an end to the indentures. It appears to me that the indentures still continued in force, and consequently that the pauper could not enter into a legal contract of hiring with *Wilson* at the time he engaged with him, he not being at that time *frei*

If an apprentice enter into the king's service, it does not avoid the indentures. Query; Whether an infant, he may avoid the indentures at his will?

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Order of sessions quashed. 6 T. R. 2 Bott. 402.

Of parish apprentices.

Deansbold v. Langham. M. 22 G. 3. Two justices released *William Ellingworth* from the hamlet of *Deansbold* in the parish of *Oakham*, to the parish of *Langham*; the sessions affirmed the order, and stated, That the pauper, *William Ellingworth*, was bound an apprentice by the parish officers of *Deansbold* to *Benjamin Stimson* of *Langham*, weaver, to till the age of 24 years; under which indenture he served upwards of four years, when *Stimson* his master failed, having no longer employment for him, told his said apprentice he might go to his father *John Ellingworth* at *Langham*; upon the apprentice's coming home, his father carried him to one *Beecroft* of the said *Deansbold*, weaver, to take him as apprentice for the remainder of the term; the father and apprentice then went to *Stimson*, who was at home in confinement, and told his wife that he had got a new master for his son; whereupon *Stimson's* wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said he had got a new master for him, and desired the indentures might be given up; upon which *Stimson* gave the indenture to his wife, who delivered

difficulty in this case; the indenture continues in force, and the only question is, Whether the service of the second was with the consent of the first master? for if so, it is a service under the indenture: of this there can be no doubt, for he consents expressly, he cancels the indenture, and directs it to be delivered to the father of the infant apprentice, who came to him for the purpose of this assignment, and he undertakes to the second master that he would not re-claim him.—Both orders quashed. *Cald.* 126. 2 *Butt.* 399. pl. 465.

E. 15 G. 3. Offerton v. Stockport. The pauper, when twelve years of age, was by indenture bound an apprentice by the churchwardens and overseers for seven years. The pauper was a party to the indenture; and it was allowed, pursuant to the statute. Near six years after, the pauper and his master entered into the following agreement: That the pauper, upon paying his master 12d. a-week, and providing for himself, should be at liberty to work for his own benefit during the remainder of his apprenticeship term; and the master should find him a loom for the remainder of his apprenticeship; and the master to receive the 12d. a week as a satisfaction for his service during the remainder of his apprenticeship. The pauper was of the age of 18 at the time of making the agreement. Neither the churchwardens nor overseers were privy to it; nor was the indenture cancelled or delivered up. The pauper married and removed to *Offerton*, and there worked during the last forty days before the justices removed him from thence, with the same tradesman who employed his master; and the master provided him a loom, and knew with whom he was working; but did not give any particular direction or consent. The pauper received the profits to his own use. The master demanded of him the 12d. a-week; but the pauper was not able to pay him. The court held, that the apprenticeship continued; that the pauper's service in *Offerton* was a service under it; and that his settlement was in *Offerton*. *B. S. C.* 802. 2 *Butt.* 414. pl. 482.

The master of parish apprentice agreeing that the apprentice shall work for his own benefit, doth not imply giving up the indenture.

H. 31 G. 2. Austrey v. Grindon. *Francis Orton*, being then about ten years of age, was, in April 1744, bound a parish apprentice to *Samuel Lythall* of the parish of *Grindon*, till his age of 24. He served with his master there under the indenture till *Michaelmas* 1754; at which time the master, in consideration of 40s. then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed and written by the master on the indenture, which he then delivered up to the apprentice. The said apprentice then went and hired for a year, and served that year in the parish of *Higbam*. Afterwards, to wit, at *Michaelmas* 1755, he hired for a year, and served that year in the parish of *Austrey*. He was then upwards of 23 years, but not 24 years of age. The removal was to *Grindon*, and

A parish apprentice when under age cannot consent to his discharge.

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essions quashed the order.—By *L. Mansfield C. J.* The
e depends upon the question, Whether he was of age,
der age at the time of his consenting to the discharge?
by comparing the dates as above, it appears that he was
r age; and then his consent signifies nothing; for the
ent of an infant apprentice is, as if he had given no con-
at all. And if so, his subsequent services can never be
dered as performed by the master's leave and consent,
o, as being a service of his master under the indenture;
use this is no express and explicit leave and consent given
he master to the particular service (as in the case of
ington above-mentioned); but was intended to be alto-
er general, and is even founded in a mistaken appre-
on, that the apprentice could consent to his being
arged; which he, being an infant, was not capable of
g. And the order of sessions was quashed, and the
nal order affirmed. *B. S. C. 441. 2 Bott. 410. pl. 477.*
6 G. 2. Ecclesal Bierlow v. Warflow. The pauper
el Wilshaw, being a parish apprentice, after he had
ned the age of 21 years, agreed with his master to cancel
ndentures, and the same were accordingly cancelled.
wards he hired for a year, and served that year in *War-*
which was within the term comprehended in the
ature. It was objected, that he was not *sui juris* when
ntered into the contract to serve at *Warflow*, for the

Bisbopstowton. The sessions quashed the order, and stated specially:—That the pauper was legally settled at *Bisbopstowton* by birth, and was bound an apprentice by the officers of that parish at the age of 11 to *Edmund Sage* of that place till 24: That he lived with the said *Sage* for five years, when his master gave him up his indenture, and recommended him to live with *William Verney* of the parish of *Chittlehampton*, *Thatcher*, with whom the apprentice made an agreement as a servant for three years: That while he was with *Verney*, *Sage* had conversation with *Verney*, and desired him to keep back some of the pauper's wages to provide him with clothes, apprehending that otherwise he would come upon him: That about the expiration of that time he returned to *Bisbopstowton*, (where his master *Sage* then resided,) and lived with one *Toyte* there, with his master's knowledge, who frequently conversed with the said *Toyte* while the pauper lived with him, but not upon the subject of his apprenticeship: That after the pauper had lived with *Toyte* three months, he came back to *Sage's* house and lived with him for a month, paying his master 6d. a week for his lodging.—By *L. Mansfield*: it seems to me clear that the pauper could not gain a settlement after the first five years under the indenture as an apprentice, because neither party in fact considered the service as such; they considered the indenture as given up, and put an end to for ever; so that the service was not, nor was intended to be, in the capacity of an apprentice; neither did the pauper gain a settlement as a servant, because there could not be such a service in point of law during the existence of the indenture: so that though in reality there was a service in point of fact, yet it cannot be applied to the purpose of gaining a settlement, because in point of law the indenture still subsisted.—The other judges concurred.—The order of sessions was quashed, and the original order affirmed. 2 *Bott.* 391. *pl.* 456.

when a parish apprentice is under age, does not discharge the apprenticeship.

M. 9 G. 3. Notton v. Roystone. *Benjamin Watson* the pauper, when an infant, was bound out a parish apprentice to *Hannah Cuttle* of *South Hundly* widow, occupier of a farm within the said township, until he should attain the age of 24 years. After he had served about six years, she quitted the farm to her son *Stephen Cuttle*, and left the apprentice there with him. The said apprentice lived with *Stephen Cuttle* there several years. Afterwards, being desirous to leave the service, he applied to his master, who told him he might go where he pleased. Whereupon he hired himself at several places, and received the wages to his own use. In *May* 1766, the said *Stephen Cuttle* gave up his indentures to him. In *February* 1767, he hired himself to *John Baildon* of *Notton*; and the said *Stephen Cuttle* being told of it in conversation,

A parish apprentice when of full age leaving his master, and the indenture delivered up to him by the master, a subsequent service with another is no service under the indenture, though the term be not expired.

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ation, said he thought it a good place for him. He
ed *Baildon* at *Notton* above 40 days, and then attained
age of 24 years. — The court were clearly of opinion,
the service with *Baildon* in *Notton* was not a service
er the indenture of apprenticeship; consequently his
lence in that parish upwards of 40 days was not sufficient
gain the apprentice a settlement here. *B. S. C.* 629.
tt. 412. *pl.* 480.

l. 25 *G.* 3. *R. v. Harberton.* Two justices remove *John*
ert from *Harberton* to *Ashpreington*; the sessions quash
order, and state the following case:—That the pauper
bound by the parish of *Harberton* an apprentice to *Wil-*
Soper of that parish until 24 years of age; that he con-
ed with his said master until he was within one month of
ears of age, when he deserted his service, and was absent
n months, and then he returned to his father at *Harber-*
where he stayed a few weeks, and then offered himself
servant to one *Edmonds* of *Ashpreington*, who refused to
him until he shewed a receipt from his master *Soper* for
ng off his time, which receipt was in the following
ts: “*Feb.* 24th, 1783. Received of *John Egbert* the
of 4*l.* 4*s.* for the remainder part of his time, by me
liam Soper.” That the receipt was obtained by the pau-
father at the request of the pauper. At the time the
nt was signed, and the money paid, *Soper* offered to

to the public to overturn, than to adhere to them; even though we may not perhaps approve of the principles on which they have been determined.—Where the facts stated are such, that upon an action of covenant brought by the master against the apprentice, the pauper could plead the matter in bar, it seems to be settled that the indentures should be considered as cancelled. And to that extent the rule may be carried without much mischief; but if extended to every possible case in which a court of equity would give relief, it would be productive of great inconvenience and uncertainty; it would increase the litigation of the poor laws, which are already a disgrace to the country; and would leave every case so much upon its own circumstances, that it must necessarily travel through every stage which the law allows, before the parties are to know what they are to expect.—If the justices at their sessions, or even out of sessions, are to be erected into chancellors, it cannot but happen, but that on the same facts very different decisions must be made. Honest and good men, when left to decide *secundum discretionem boni viri*, must and will vary in their sentiments. Such a rule, therefore, would be highly inconvenient, and indeed would amount to say there was no rule at all.—The question then is, Whether the facts stated here are such as put an end to the indentures in law, or could be pleaded in bar to an action of covenant on them? In that light I shall consider it. The master received four guineas as a satisfaction for the remainder of the time: he gave a receipt for the money as such, and offered then to deliver up the indentures: If it was not done in fact it was owing to the pauper's father not thinking it material; and on the pauper's attaining the age of 24 years, the master did in fact deliver up the indentures.—After paying the money, if an action had been brought by the master on the indentures, the pauper might have pleaded accord and satisfaction in bar; or if the master had refused to deliver them up upon demand, the apprentice might have brought trover or detinue for them.—The indentures must be considered as not existing from the time the money was paid, and then the pauper gained a settlement by hiring and service at *Asbprington*.—1 T. R. 139. 2 Bott. 400. pl. 466.

E. 26 G. 2. Eakring v. Selson. Two justices make an order to remove *George Witworth* from *Eakring* to *Selson*. Upon appeal, the sessions discharge that order. The case was: The said *George Witworth* was put out a parish apprentice to *Richard Tomlinson* of *Eakring* till his age of 20 years. He served his master under this indenture for several years at *Eakring*. About three years before he attained 20 years of age, he ran away from his master, and loitered for some time about

A boy bound out as a parish apprentice, may after his master's death hire himself as a servant.

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t the country. In the mean time his master died. at *Martinmas* after, the said *Witworth* hired himself servant to *William Flint* of *Selson* for a year, and served that year at *Selson*, and received all his wages to his own the executors of *Tomlinson* taking no notice of him. he had not, at the expiration of the said service, attained age of 20 years. And the sessions being of opinion, that said *George Witworth* did not, by virtue of such hiring and ce at *Selson*, gain a settlement in the parish of *Selson*, said, reverse the original order. But by the court the rs of sessions was quashed; for that after the master's h, the apprentice was at liberty to hire himself; and as was hired for a year and served a year in *Selson*, his legal ement was there. Apprenticeship is a personal trust reen the master and servant, and is determined by the h of either master or apprentice. The counsel who were ave shewn cause against quashing the order of sessions, ed that it was not defensible. *B.S.C.* 320. 2 *Bott.* 396. 60.

14 G. 3. *Wrexham v. Chirk*. An apprentice bound three years, without any consideration, to a slater at *Wrexham* served under the indenture for nine months: Then master died; and he continued a fortnight with the ow, to complete the work unfinished by his master.

of 6d. in the pound, directed to be paid by the 8 *An. c. 9.* was paid, or whether the indentures were stamped as the act requires. It was objected that evidence not legal had been received, for parol evidence of an indenture had been received, which they state not to have been produced, and they give no reason for not producing it. And also, that it did not appear that the duty was paid, or the indentures duly stamped. But the court over-ruled the objection, for it is stated 'that it appeared to them that he was bound, and it is not necessary that this evidence should appear to us. Perhaps the indenture was lost; and in that case could the justices receive no other evidence of the binding? And as to the duty and the stamp, they do not say the duty was not paid, or that the indenture was not stamped.' *B.S.C. 151. 2 Bott. 448. pl. 511.*

R. v. St. Helen's in Abingdon. 22 & 23 G. 2. The evidence relating to the indenture was, *Joan Hudson* the mother of *Joseph Hutt*, the father of the children removed, (who had absconded,) gave in evidence, that the said *Joseph*, her son, in 1733, "was bound apprentice to his grandfather by indenture for seven years; and that the said indenture was delivered into the custody of *W. H.* his grandfather, as she had been informed by the said *Joseph* himself; but that she never saw the indenture of apprenticeship herself, and knew nothing of it, but from the information of the said *Joseph*, and it was reputed in the family that the said *Joseph* was his apprentice; and was so described in the grandfather's will." — It further appeared, that the said *Joseph* served the grandfather five years in the parish of *St. Helen*, under the said indenture. That the grandfather provided for the said *Joseph* during those five years, in cloaths and necessaries; that the grandfather died in 1738, leaving *M. H.* his widow, and *John H.* his son; that application was made by the parish of *St. Saviour* in December 1748 to *John*, who then lived with his mother, in the house where the grandfather died, and where his goods and effects were, to know, whether he had in his custody any indenture of apprenticeship between the said *William* and *Joseph*, and *Joseph* said he could not find it. And here the inquiry stopped, as to him and all other persons. And this was the only evidence that the indenture of apprenticeship was lost. Also *John Hutt* gave in evidence that he was employed by his father *William Hutt*, to draw an indenture of apprenticeship between his said father and the said *Joseph H.*, which he did, but not on stamped paper; and that after the death of *William Hutt*, *Joseph* refused to serve his widow, because the said paper writing was not stamped. The removal was of *Joseph's* wife and four children from

But it must be most clearly shewn to be lost

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Saviour's to *St. Helen's, Abington*, and was confirmed by sessions. And *Per Cur.* there is not stated enough to show that this is a binding within the act. Both orders reversed. *B. S. C.* 292 and 735. 2 *Bett.* 449. pl. 513. 35 G. 3. *R. v. Castleton.* *Martha Podley* was removed from *Castleton* to *Bomford* in *Derbyshire*. The sessions quashed the order, and stated the following case: The pauper was alleged to have been bound an apprentice to *N. Timms* of *Castleton*, by indentures bearing date in or about the year 1760. It was proved on behalf of *Castleton*, that there were two parts of the indenture, one of which remained with the parish officers of *Castleton*, and was destroyed; the other was given to *Timms*, who delivered the same to *Miss Taylor* of *Bomford*, at the time of the assignment hereafter mentioned. Application was made to *Miss Taylor*, not then residing at *Bomford*, for that part of the indenture so delivered to her, who said, she could not find the same, nor did she know where it was. *Miss Taylor* is living, but was not summoned to the sessions. *Timms* afterwards, by parol, assigned the pauper to *Miss Taylor* in *Bomford*, and the pauper with her consent served her in *Bomford* upwards of 40 days. The justices were of opinion, that the above was not sufficient evidence of the indenture. The only question is, Whether the part of the indenture which was delivered to *Miss Taylor* is properly accounted for? The court thought the case too clear

of the pauper for a year in *Middlezoy*; the respondents proposed to shew that a settlement could not be gained thereby by reason of subsisting indentures of the pauper's apprenticeship to one *Warren* of *Sudbury* at the time of such hiring and service: They had given notice to the appellants to produce the said indentures, and an indenture was accordingly produced in court by the appellants with proper seals and signatures, but no subscribing witnesses thereto; and no evidence was adduced by the respondents to prove the sealing and delivery thereof; whereupon it was contended by the appellants, that the same could not be given in evidence without proving the execution thereof; to which it was answered, that coming from the hands of the appellants, it ought to be received in evidence against the party producing it without proof of the execution. The sessions being of opinion that proof ought to be given of the due execution thereof, refused to admit the same in evidence without such proof. The respondents then produced the counterpart, which they proved to be duly executed, and tendered the same in evidence; but the court also refused to admit the said counterpart. The pauper served the said *Warren* in *Sudbury* subsequent to the date of the said indentures; and afterwards, before the term thereof expired, without any consent of *Warren*, served for a year as aforesaid in *Middlezoy*, under a hiring to one *Wilson*.—By the court: The sessions have done wrong in refusing to admit this evidence; because as the indentures came out of the hands of the appellants, they were precluded from saying they were not properly executed. In civil actions, where a plaintiff wishes to give in evidence a deed in the defendant's custody, he gives him notice to produce it; and the deed, when produced, must *prima facie* be taken to be duly executed, because the plaintiff, not knowing who are the subscribing witnesses, cannot come prepared at the trial to prove the execution of the deed. But in this case it appears, that if the appellants had not produced the indentures at all, the counterpart must have been admitted in evidence, which would have been sufficient.—Order of sessions quashed. 2 T. R. 41. 2 Bost. 452. pl. 515.

for it from the opposite party need not prove its execution.

In a subsequent case however of *Gordon v. Secretan*, T. 47 G. 3. Lord *Ellenborough* Ch. J. said that the case of the *King v. Middlezoy*, which was much questioned at the time, had been since over-ruled. And that it was not enough to give notice to the opposite party in a cause to produce an instrument in his hands, in order to dispense with any further proof of it by the party giving the notice; but that the production of it at the trial in pursuance of such notice, did not supersede the necessity of proving it by one

But now it is held that it must be proved by the party calling for it, though it come out of the hands of the adverse party.

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the subscribing witnesses, if any, as in ordinary cases. — Lawrence J. said, that it had been so decided by L. Ken- in case of a will, which the adverse party in whose hands as had notice to produce and did produce, that the party ng for it, was bound to prove it by calling one of the cribing witnesses. 8 E. R. 548.

Where the deed is proved to be in the hands of the oppo- party, who upon being called upon refuses to produce a copy of it will be good evidence; but such copy ought be proved by a witness who has compared it with the inal. *Buller's Law of Nisi Prius*, 254.

If the deed be 30 years old; it may be given in evidence out any proof of the execution of it: however there ht to be some account of it, where found, &c. And if e be any blemish in the deed by razure or interlineation, deed ought to be proved, though it were above 30 years by the witnesses if living, and if they be dead, by ing their hand, or at least one of them, and also the d of the party. *Id.*

Evidence of a dying confession by the subscribing witness deed, may be given to prove it forged. *Aveson v. Lord naird.* 6 E. R. 195.

The deed must be proved by one witness at least, (if led). *Id.*

If there be no subscribing witness, or the name of a fic-

So if one of the covenants be altered, *Id.*

So if blanks left originally, be afterwards filled up, though by the assent of the parties. *Id.* A subsequent filling up of the blanks.

Razure or interlineation does not necessarily avoid a deed, *Id.* Interlineation.

Where the seal is broken off, the deed is destroyed, unless it (as it may) be proved to have been accidental, or without the concurrence of him whose seal it was. Seal broken off.

Se^ct. XII. *Of Settlement by renting a Tenement ; and herein*

1. *What constitutes such a tenement as will enable a person to gain a settlement.*
2. *Of the value of the tenement, and how it is to be ascertained.*
3. *Of divided tenements.*
4. *Of joint occupation.*
5. *Who may gain such a settlement.*
6. *Of residence ; as to time and place.*
7. *Of the time for which, and at which the contract is made.*
8. *Of fraud.*

By the 13 & 14 C. 2. c. 12. On a complaint within 40 days after any person shall come to settle in any tenement under the yearly value of 10*l.*, two justices may remove him to where he was last legally settled for 40 days.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any *q^uo* whatsoever to have gained a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10*l.*, or shall execute some annual office in such parish, being legally placed in such office.

By the former of these two statutes, a person was removable from any tenement under the yearly value of 10*l.*, provided the complaint were made within 40 days from such person's coming to settle in the tenement. It therefore followed, that if no complaint were made during those 40 days, he thenceforth continued there irremovable ; in other words he had gained a settlement in the parish in which the tenement was : And it likewise follows by inference from the words of the statute, that persons coming to settle on a tenement of 10*l.* per annum, are altogether irremovable.

By 35 G. 3. Poor persons are not removeable (in any case) till actually chargeable.

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What constitutes such a tenement as will enable a person to gain a settlement by residence thereon.

concerning this, it hath been adjudged as follows :

An incorporeal hereditament is a tenement within the meaning of the statute. *R. v. Piddletrenthide*. 3 T. R. 772. *Hollington*. 3 E. R. 113. *R. v. Chipping Norton*. R. 239., and in many other cases.

Winn v. Stone. H. 12 G. Upon a special order of sessions, it was stated, that the pauper rented a *coney warren* a cottage upon it at 10l. a-year, which the justices were of opinion did not gain him a settlement. — But by the order : A *mill* (a) hath been held to be a tenement within the meaning of the statute, and why not this ? It is his ability to pay 10l. a-year, that is the foundation of the settlement ; and whether he pay it for a house of habitation, or for a warren which brings him in a profit, is not material. The order of sessions must be quashed. 2 Str. 678. 2 Sess. C. 109. 11. 92. pl. 140.

R. v. Piddletrenthide. T. 30 G 3. In this case there were two points, the second of which was this. The pauper rented (*inter alia*) a warren to kill rabbits for his profit, and *Grange Warren*, with a small house on it to keep it, in the same parish, at 30l. *per annum* ; and also another warren for the same purpose, at 15l. *per annum*. The

not being part of the said pond, for which the father paid *Mr. Edwards* 10l. a-year, and was to supply his house with fish: During the time the father held the said premises of *E.* he rented under a parol demise *the fishery of Causeway river in New Alresford, with the grates to a fish-house there* at 3l. a-year. The said house and piece of land first mentioned, and the right of cutting sedge, &c. on the said seven acres of rough meadow ground, and the said fishery, &c. last mentioned, were together of the annual value of 10l., without taking the said pond, or any thing thereto belonging, into the account. — *L. Mansfield*: Upon this state of the case, the court will consider that the fishery and the soil passed together; therefore the pauper took a tenement within the statute. — *Asburst J.* There is no doubt but a fishery is a tenement. Trespass will lie for an injury to it; and it may be recovered in ejectment. — *Buller J.* The fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow that if it had been any other kind of fishery, it would not have given a settlement. Order of sessions affirmed. 1 *T. R.* 358. 2 *Bott.* 97. pl. 150.

R. v. Whixley. H. 26 G. 3. Removal from *Whixley* to *Healough*, and quashed by the sessions. The pauper served an apprenticeship to *R. P.* in *Whixley*, who was then residing there under a certificate from *B.* In the two last years of his apprenticeship his master rented a dwelling-house, garden, &c. of the value of 1l. 11s. 6d. a-year, and also a meadow of 7l. 10s. a-year; and also at the same time (*viz.* for those two years) he occupied two cattle-gates of the value of 1l. 4s. a-year, in a stinted pasture, on condition that the said *R. P.* should keep in repair the common highway gates, which the persons having a right to the cattle-gates were bound to sustain. The question for the opinion of the court was, *Whether the said cattle-gates were a tenement within the statute?* In support of the order of sessions it was urged, that these cattle-gates are not like commons. They are conveyed by lease and release. The owners of them are tenants in common, they have a joint possession and several inheritance, and are as much demiseable as any several tenement whatsoever. It was answered, that he occupied those cattle-gates on condition of keeping the highway gates in repair, and that this was only a licence to depasture his cattle in consideration of his keeping the said gates in repair. — *L. Mansfield* said, these cattle-gates pass by lease and release, and cannot be devised but according to the statute of fraud; they are therefore to be considered as a tenement within the statute. Order of sessions affirmed. 1 *T. R.* 137. 2 *Bott.* 97. pl. 149.

Renting a cattle gate gains a settlement.

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v. Derfingham. T. 38 G. 3. Removal from *I.* to *Derfingham*, and confirmed by the sessions. The pauper in 1795, went to reside at *Derfingham*, in a house with an acre of land, and the going of two cattle on *D.* mon, which he rented of one *Pretty*, at the rent of 6l., the *Michaelmas* following; he continued to occupy the same till the succeeding *Michaelmas*, viz. *Michaelmas* 1796, at the same year; about the time he went to *D.*, in *June* 1795, he hired of one *Smith* the going for three other cattle upon the same common, till the *Candlemas* following, at the rent of 1s. 6d., and of one *Chadwick* the going for one other cattle on the said common for the same time, at the rent of 6d. The common rights in question were rights of common in gross. The whole rent paid was 10l. 2s. for the year. — *L. Kenyon* Ch. J. It appears that the rights of common were rights of common in gross, and that puts an end to the question. A common in gross is a matter of course. *L. Coke* says that a *præcipe* will lie for it. And there is no doubt but that the pauper rented those rights of common. Order of sessions confirmed. 7 T. R. 671. 2 Bott. 105. 56.

v. Chipping Norton. T. 44 G. 3. Removal from *Chipping Norton* to *Over Norton*: The sessions quashed the order. The pauper being legally settled in *Over Norton*, went to reside at *Chipping Norton*, where he rented a house at 8l. 10s. The corporation of *Chipping Norton* is not entitled to

settlement by renting the tolls. And on the other side it was said that this was a mere *personal contract*; and it was objected further that a corporation could only demise under *seal*, and here the tolls were stated to have been taken by a *verbal agreement*. — And L. *Ellenborough* Ch. J. said, that as no interest passed to the pauper by such parol demise, the question could not be raised. It was a mere license to him to collect the tolls, the right to which still remained in the corporation; though it might be a ground on which to apply to a court of equity. — But if this difficulty (as to the mode of agreement) could be got rid of, the other point, as to the taking of the tolls being a taking of a tenement within the construction which had been put upon that statute, might be disposed of in favour of the settlement, upon the authority of Lord *Coke*, in his comment upon the statutes of *Westminster*, 2. And on *Webb's case*, 8 *Rep.* And on the opinion of Lord *Kenyon* in the case referred to, that a taking of an incorporeal tenement will confer a settlement. — It being found that no other instrument had been executed, except a bond given by the pauper to the corporation, with covenants for the rent, the court said that could convey nothing from the corporation; and the order of sessions was quashed. 5 *E. R.* 239. 2 *Bott.* 112. *pl.* 162.

R. v. Catherington. T. 30 G. 3. In this case it was held (*obiter*, for the main question was, Whether the pauper, a mortgagor were or were not in possession?) that one equitable title is sufficient to give a settlement; and that a mortgagor in possession gains a settlement. 3 *T. R.* 771.

Equitable title is sufficient. A mortgagor in possession may gain a settlement.

Evelyn v. Rentcombe. H. 10 An. An order was drawn up specially to have the opinion of the court, Whether renting of a water-mill of 10l. a-year, would make a settlement? — And by the whole court clearly; A mill is a *tenement*, and the renting thereof must gain a settlement within the statute, 2 *Salk.* 536; that is, if the party live therein, or within the parish. 2 *Bott.* 92. *pl.* 139.

The renting of a water mill gains a settlement.

Butley v. Benhall. T. 10 G. 2. The question was, Whether renting a *wind-mill* at 14l. a-year, gained a settlement? it having been determined that a water-mill did. It was said, those are always habitable, but the others often are not. — But by the court, it is the same as if he had rented land of that value. 1 *Seff. C.* 320. *B. S. C.* 107. 2 *Bott.* 93. *pl.* 141.

So a wind-mill.

Minchin Hampton v. Bisley. E. 3 G. 2. The pauper rented in the parish of *Bisley*, lands of the yearly value of 8l. from his father, an house of the yearly rent of 1l. 10s. from his uncle, and the same year took the *pasture* of a piece of land in the said parish from *All Saints day* to *Candlemas*, and paid 12s. for the same, which piece of land was worth 6l. a-year.

Taking the pasture only gains no settlement.

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as urged, that this was a good settlement, because during three months the man was not removeable. But in case the court held, that *taking the pasture of a piece of* was not more than taking the herbage, or than taking common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, if the words had been, that he had *taken a pasture ground* three months, that would have made a good settlement. But the case went off upon another point, *viz.* for want of adjudication. 2 *Seff. Cas.* 132. 2 *Str.* 874. B. S. C.

v. Stoke. E. 28 G. 3. The pauper, in addition to a house and land, took the hay-grass and after-math of a meadow for 2l. 5s. 6d. He paid no taxes, but he fenced the meadow and spread the hillocks, and the question was, whether this were a tenement within the statute? The court thought it was not. And in support of their order they said that the agreement for the hay-grass and after-math conveyed no interest in the soil, so as to give the pauper a settlement. That he derived from the contract a personal right to take the hay-grass and after-math: but he was to take not the general but only the particular crops of the land. That *Co. Lit.* 4b. took the distinction between *pasturam* and *poscuum*; by the former the ground

which he was removed from *Penrith* to *Brampton*. On a rule to shew cause why the order of sessions should not be quashed, the court were clearly of opinion that the pauper gained a settlement in *Brampton*; and that this could not be distinguished from the above case of *R. v. Stoke*. And they added, that taking land for a particular purpose, such as that of setting potatoes, was sufficient to confer a settlement. Order of sessions confirmed. 4 T. R. 348. 2 Bott. 101. pl. 153.

Taking land for a particular purpose will gain a settlement.

R. v. Lockerly. H. 25 G. 2. (Although this case is now over-ruled, yet, as it was the first of a particular class which has undergone considerable discussion, it is thought fit to give it at length in this place, that the progress of judicial opinions upon this subject may be observed and understood.)

Renting cows does not gain a settlement

Removal from *Lockerly* to *Shirefield English*, both in the county of *Southampton*: and quashed by the sessions. The pauper was settled in *Shirefield English*, but removed to *Lockerly*, and there entered into articles of agreement with one *J. M.* as follows. *M.* covenanted with *Edwards* (the pauper) to demise to him a dairy of 16 cows with the messuage or tenement and dwelling house, and feeding for the said cows on 21 acres of clover ground, and 13 of meadow land, with the after-leaze of a meadow, all in *Lockerly*; "also the run of the yard, and the arshes of the farm (of which the dairy &c. were part) for pigs; and the run of one horse with the cows; — for one year, *M.* to allow to *E.* all the sherl wheat arising from the corn growing on the said farm: and also provide for the use of the cattle, when wanted, five tons of hay; and for the same feed of the cattle, cause the above mentioned lands to be laid up at certain times; and should put the tenement into repair, and fetch the goods, necessaries and fuel of *E.* home to the said messuage. And if the said cows shall not be delivered of their calves by the 1st of *May* following, *M.* shall deduct out of the rent reserved 2s. per week for every cow not so delivered, until she shall be delivered, and also what may be reasonable for every calf wanting to each cow. *E.* to pay *M.* 3l. 5s. for every such cow; payable quarterly." *E.* entered and occupied; the cows were fed on the lands mentioned; and during some time, sheep belonging to *M.* were fed with them on a part of them; but the 13 acres of meadow were never fed, but by the said cows.

It was objected that this was not a tenement within the 13 & 14 C. 2. c. 12. That a tenement is every thing that is holden. (1 Inst. 4, 6, & 19 :) where profits a prendre are considered as tenements. That this was a profit a prendre, connected with an interest in the land. That though this

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lessee had only the herbage, he might tithes or distrain. That tithes are a tenement, and no ownership of the soil. *E contra* it was said this was not a lease of the land, but a mortgage for the milk of another man's cows: the delivery even of the cows was not delivered to the lessee of the agreement was only how the lessee might feed his cows. That this was a profit from the land.—*Wright J.* said, That the land remained to *M.* for he was to lay it up at such a value as a tenement must lie in tenure, and must relate to the land as this contract related to cows. The pasture, generally, is not *let*; but only the feeding of the cows; and the value of the meadow was not stated. That the agreement for the use of the cows, and the fee was personal; and was merely personal. That no interest passed or was intended to pass. (And he said in the case of *Minchin Hampton*, it were an agreement for the pasture only of the land," he should doubt of it.) The other judges assented: and quashed the order of

C. 315. 2 Bott. 99. (n)
30 G. 3. *R. v. Piddletrenthide.* *John Belly* and family were removed from *Chaldon Herring* to *Piddletrenthide* both in *Dorsetshire*. The sessions confirmed the removal to the opinion of the court on the following

received a different determination. But without considering that case, I think that the pauper took a tenement in *Chaldon Herring*, both by renting the dairy and the warren. *L. Coke* says, that *prima tonsura* is a tenement; then the dairy was a tenement. The other taking was also sufficient; for it was, if I may use the expression, a pertainancy of the profits of the land by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement. If this case had been precisely similar to that of *R. v. Lockerly*, perhaps I should have hesitated before I agreed to overturn that decision; but as this is distinguishable from that case (though the distinction is nice) I think that the pauper gained a settlement in *Chaldon Herring*. — *Asburst J.* It seems difficult to reconcile all the cases on this subject. If *R. v. Lockerly* be law, I do not see how this pauper can have gained a settlement in *Chaldon Herring*; but as there are authorities both ways, I am inclined to think that a settlement was gained in *Chaldon Herring*; the *criterion*, by which the question is to be decided, being the ability of the person taking the tenement. — *Buller J.* In all doubtful cases one leading ground is, the ability of the pauper to pay the 10l. *per annum*. But on the facts here stated, I think this person rented a tenement within the construction of the statute of C. 2. I cannot agree with the determination of *R. v. Lockerly*. That was considered as a personal contract; but all contracts are in all respects personal. The question in such cases really ought to be, Whether or not it be a contract to receive profits out of land? The present I consider as such; and so was that in *R. v. Lockerly*. I am therefore of opinion, that the conclusion drawn in that case was wrong. As to the other point, I do not consider this merely as a privilege to kill rabbits when the pauper could find them, and that the landlord might take them all if he chose it; but the warren was to be kept in the same state as it was when it was let; otherwise the contract between the landlord and the tenant would be destroyed. In that respect then the pauper had an interest in the land. Besides he took a house with the warren. — *Grose J.* It is impossible to reconcile all the cases on the subject; and I do not understand the ground on which that of *R. v. Lockerly* was decided. In these cases, I think, that if the pauper had credit to rent 10l. *per annum*, he gained a settlement. The case of *Kinver v. Stone* (a) decides the present. Both orders quashed. 3 T. R. 772. 2 Bott. 99. pl. 152.

(a) *Ante*, this same title, p. 370.

R. v. Tel-

Door. (Settlement.) [Sect. XII. (1.)

P. v. Tolpuddle. E. 32 G. 3. *G. Hill* and his wife and family were removed from *Puddletown* to *Tolpuddle* in *Dorset*, which was confirmed at the sessions, subject to the opinion of the court on the following case: *J. Chapman* the tenant and occupier of a farm in *Tolpuddle*, part of stock of which farm consisted of cows, which, according to the usual course of husbandry in that county had been constantly let to some dairy-men. The pauper rented, under verbal agreement, twenty of those cows of *Chapman*, at 10s. per cow per annum; it was also agreed between them (as is usual there) that the owner of the cows should feed and support them, and that they should depasture in certain lands called the *Cow-leaze Grounds* from *May-day* till 18th *September*, and afterwards in certain meadow grounds which are kept for that purpose from the time the same are mowed; both which grounds were part of the said farm, and were in the occupation of *Chapman*; and when the pasture of meadow grounds was consumed, that the cows should be kept by *Chapman* in some other of the farm grounds with his other cattle, or be foddered in the farm yard with hay by him. The *Cow-leaze* was not to be fed upon by *Chapman*'s cattle from *Lady-day* till *May-day*, nor was he to feed any other cattle either in the *Cow-leaze* or meadow ground whilst the same were fed by the cows so rented. But the hay of

to confer a settlement on those persons who have the ability to take a tenement which the statute has established as the criterion. I confess, it seems to me impossible to reconcile the decision of the above case of *R. v. Lockerly* within our determination in this case that the pauper gained a settlement in *Tolpuddle*; but if we are of opinion that that case cannot be supported, it will be more manly to say so in express terms, than by endeavouring to make nice distinctions, to induce the magistrates below to consider it as an authority hereafter. When the above case of *R. v. Piddletrenthide* came before us, we all doubted of the decision of *R. v. Lockerly*; but there being another distinct ground upon which we were warranted in supporting the settlement, we were not directly called upon to over-rule that case. But now it being impossible to distinguish between this case and that, I think we are bound to deny the authority of that case, and to substitute in its room a better exposition of the statute C. 2. It has been argued, that if we decide this to be a tenement we shall depart from the words of the statute, but in this case the pauper took a tenement, emphatically a tenement. Any thing is a tenement which is a profit out of land. In order to take a tenement it is not necessary the party should have the fee simple or fee tail; any minute interest in land is parcel of a tenement; such minute interest indeed cannot be entailed, but all the parcels when consolidated together, may. A beast gate has been held to be a tenement, and yet that is not the whole land but the profits of the land to a certain amount. So here the profits of those lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own and he had rented the feeding of them, that would have been unquestionably a tenement, like the taking of the pasture, the hay and aftermath. And I think that these cows were the pauper's for a certain period; they were not so far his own that he could have sold them, but they were his that he might use under the contract for a limited time. And this was not the less the taking of a tenement, because the pauper could only enjoy the land in a particular mode, for in many farms the tenant stipulates, that he will not depasture sheep or horses on particular grounds. I do not see therefore why this is not strictly speaking a tenement, for the pauper had for a certain part of the year, the exclusive right to the pasturage of these grounds to be taken by the mouths of the cattle. The other judges delivered their opinions at considerable length to the same effect. Both orders confirmed. 4 T. R. 671. 2 Bott. 101. pl. 154.

R. v. Minworth. H. 42 G. 3. Removal from *Minworth* in the county of *Warwick* to *Worley Wigorne* in the county of *Warwick*. The land on which the cows are fed, must

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reffer, and quashed by the sessions. The pauper rented lady-day till six weeks after *Michaelmas* two cows, at 5s. a cow *per week* of J. G. the tenant and owner of certain lands in *Minworth*. It was agreed that the cows should feed and support them: they were to be fed on certain lands specified, but which lands were not of the annual value of 10l. G. was not to feed his cattle in any of the above-mentioned lands whilst they were depastured with the cows so rented by the pauper. In support of the order of sessions it was contended, that it was enough if the annual value of 10l. had arisen from any land connected with the realty, though no part thereof. (*See J.*) This case is very plain. Unless the pauper had a tenement of 10l. a-year value, he could gain no settlement. And that fact is expressly negatived; for it is that he rented two cows, which were to be fed on particular lands, and that those lands were not of the annual value of 10l. That makes an end of the question. The rule on which the renting of dairies has been holden to be a settlement is, that in truth it is a contract for a particular interest in the land to be enjoyed in a particular manner, which alone constitutes it the taking of a tenement; and in all of these cases which have been decided on that point, it was understood that the land itself was of the requisite value. The pauper, then, did not gain a settlement.

profits out of land? If that be so, it determines this case, for here the cows were the pauper's own, and the contract, which was for the pasturage of them, was, to use the words of *L. Kenyon* in the same case, a contract *for the permanency of the profits of the land by the mouths of the cattle*.—Both orders quashed. 3 *E. R.* 133. 2 *Bott.* 111. pl. 161.

R. v. Disbury. *M.* 45 *G.* 3. A contract to feed the cows, generally, under which they might be fed with green tares bought in the market, would not be a tenement within the act.—Per *Lawrence J.* *Addenda to 2 vol. Nol. P. L.* 1st Edit. p. 25.

R. v. Stoke-upon-Trent. *H.* 49 *G.* 3. Removal from *Stoke-upon-Trent* to *Norton-on-the-Moors*, and quashed by the sessions. The pauper under a verbal agreement rented and paid for the hire and privilege of milking two cows belonging to a *Mr. Repton* the sum of 5s. 6d. per week each cow, for forty successive weeks. The two cows were by the terms of the agreement to be depastured by *Mr. Repton* on his farm at *Norton-on-the-Moors*, in common with his other cows; and were in fact depastured on such of the lands belonging to the farm, as *Mr. Repton* thought proper: the pauper never went on the lands to fetch them, but they were regularly brought up with *Mr. Repton's* other cows to the fold yard, and there milked by the pauper and his family. During the time the pauper so rented the said cows he resided in the parish of *Norton-on-the-Moors*, at a cottage for which he paid 5s. a-year: and the depasturing of the two cows, together with the cottage, was worth more than 10l. a-year. In support of the order of sessions it was argued upon the principle of all the (preceding) cases, that this was a mere personal contract for the hire and privilege of milking two cows, and no tenement, which must lie in tenure and relate to land: and that all the cases went upon the ground of there being an interest in land.—But by *L. Ellenborough C. J.* There is no solid distinction between the case of *R. v. Hollington* and this. There the pauper had only hired the depasturing of his own cows in common with the cattle of the owner in certain land; here he hired the cows themselves, which for this purpose are the same as his own, together with their depasturing in common with the owner's other cattle, upon a certain farm: all included in one contract. If the cows had been the pauper's own, this case would have been identically the same as the former; but that fact was no material ingredient in the former case: for the cows are his own for the time he hires them. *Grose J.* said, That it was a contract to take the milk of cows to be depastured on a certain farm; which was purchasing *pro tanto* the interest in those pastures in which the cows were to be fed.

—*Le Blanc*

If the contract as to the place of feeding be not specific, no settlement will be gained.

Though the cows be not the pauper's own, and he only contracts for the privilege of milking them, they being to be fed on a certain farm: yet that will gain a settlement.

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Blanc J. The only difference between this case and *Piddlerrentbide* is, that there it was stated to be the hiring of a *dairy*, which is only a contract for the hire and usage of milking cows, which during the time are to be pastured on the owner's lands. But there the cows were kept in particular grounds at particular seasons of the year; and here they were to be depastured on the farm in common with the owner's other cattle. In *R. v. Tolpuddle*, the agreement was as here, for the owner's cows at so much per head, and though they were to have the exclusive pasturage of certain grounds during part of the year: yet that has been held to make no difference.—“If” (said *L. Kenyon* in the latter case) “the cattle had been the pauper's own, and he had rented the feeding of them, that would have been unquestionably a tenement; like the taking of the use of the land for hay and aftermath; and I think that these were the pauper's for a certain period, &c.; and this was not less a taking of a tenement, because the pauper could enjoy the land in a particular mode.” The same reasoning will apply to this case. In *R. v. Minworth*, there is no doubt but that the contract was for the taking of a tenement; but the value of the land on which the two cows were to be depastured did not amount to 10*l.* a-year, and therefore no settlement was gained. Now here the pauper contracted for the milking of two specific cows (not any cows) which were to be depastured on the farm of the

be necessary to use all the six pointing places; and *B.* was paid by the piece for all the work he did for *Webb*. No particular places were let to *B.*, but by his contract with *W.* he might have the use of any two he pleased; but work or no work, *W.* was entitled to his rent of 16*l.* a-year for the two places. The mill belonged to *W.* The pointing places are frames of wood, which support the spindles on which grinding stones turn, which are moved by means of leathern straps communicating with the great wheel of the mill, which is turned by water. The pointing places are placed on the floor of the room, and at each of them a man sits; and the needles are pointed by being pressed against the grinding stones. The court were of opinion, that there was no pretence for calling this agreement to work in the mill, the taking of a tenement. 8 *E. R.* 449. 2 *Bott.* 106. *pl.* 157.

R. v. Tardebigg. T. 41 G. 3. Removal from *Tardebigg* to *Alvechurch*, and quashed by the sessions. The pauper's husband took three runners for scouring needles in a mill belonging to *Milward* in *Tardebigg*, and a packeting room at 1*s.* a packet for every packet scoured thereat. He took afterwards at different times, other runners and another packeting room of another person. The runners were a part of the machinery, fixed to the floor of the mill with screws. *Westwood* (the pauper's husband) and his family slept in this mill for two years. One floor of a mill will contain several runners. He had the exclusive right to the use of these runners and the packeting room. He also took a cottage of *Milward*, and the rent was altogether more than 10*l.* per ann. — Per Lord *Kenyon* C. J. There is no distinguishing this case from *R. v. Dodderhill*, (*ante.*) A runner is no more a tenement than a pointing place is so. It might as well be said to be a taking of a tenement if a man contracted to pound in a certain mortar, or to use a particular grinding stone in a mill. It is not in effect a taking of a part of the mill as a tenant, but a licence to use a particular part of the machinery of it for the purpose of manufacture, and for no other purpose. — *Lawrence* J. observed, that *R. v. Whitechapel* (*post.*) did not apply here, for here the particular value of the runner is found, which is necessary to be taken into the account to make up the 10*l.* a year, and that not being a tenement cannot confer a settlement. That besides, it was not even stated that the runner was in the packeting room which was appropriated to the pauper's use. 1 *E. R.* 28. 2 *Bott.* 107. *pl.* 158.

R. v. Mellor. H. 42 G. 3. Removal from *Bramhall*, in the county of *Chester*, to *Mellor*, in the county of *Derby*, and confirmed by the sessions. The pauper being legally settled at

So, runners in scouring needle though they be screwed to the floor of the mill

So, a standing place for a carding machine.

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f. took a house in *Stockport*, of the value of 5 *l.* he also took from the owner of a mill in *S.*, a steam engine, a standing place in a room for a carding machine, which was worked by the machine, and fastened to the floor and the roof of the room, was to pay his landlord 20 *l.* a-year, and should give the other three months to quit. *y.* to the room, (as had other persons using the mill in a similar way,) and the owner had a master key to the door against the order of sessions, that the only thing taken was the place in the room where the machine was to stand, and therefore the taking was of that part of the room itself, and not of the machinery itself, as *s.*—But the court were of opinion, that this was a taking of the mill, and not of the machinery of the mill, and not of any part of the mill itself, and therefore that the taking could be gained by it. 2 *E. R.* 189. 2 *Q. B.* 59.

v. Inhabitants of Elvet. 11 *East.* 93. *R. v. Inhabitants of Elvet.* The widow of *John Taylor*, and her five children, by name, from *West Rainton* to *Elvet*, in the parish of *St. Andrew*. The sessions confirmed the order. By 3 *Q. B.* 17, intituled, "An act for paving, lighting, water-supplying the streets, &c. of the city of *Derby*," the borough of *Framwelgate* and suburbs thereof, and the parishes adjoining for removing and preventing

three years, at the yearly rent of 20*l.*: under this lease *John Taylor* alone entered into the toll gate and house, and continued to reside there with his family, collecting the tolls for the said term. The tolls were collected and appropriated to the general purposes of the act; neither the tolls nor the gate-houses, nor the respective lessees, were assessed to the poor's rate. The sessions were of opinion, that the said gates and toll-houses were not such turnpike gates and houses, as are within the meaning of the 56th section of the general turnpike act 13 G. 3. c. 84., and that therefore the pauper's husband acquired a settlement in *Elvet* by residing at the *Farewell Hall* turnpike, and renting the said tolls and gate-houses there.

By s. 56. of the general turnpike act, "No gate keeper of any turnpike road, or person renting the tolls thereof, and residing in any toll-house belonging to the said trust," shall be removeable from such toll-house till actually chargeable, and no such gate-keeper, &c. shall thereby gain any settlement.

In support of the order of sessions it was contended, that the above mentioned clause in the general turnpike act was confined to toll gate keepers, &c. appointed by the trustees of turnpike roads, to collect the tolls for such turnpike roads: whereas, the tolls here were collected by order of the commissioners appointed by a local act for various local purposes, amongst others for repairing the streets of the city of *Durham*, and not for the repair of turnpike roads within the meaning of the general turnpike act.

Per Curiam. There is no difference in effect, though the appellation of turnpike road does not occur in the local act, the one is a stone road, and the other a gravel road, and every character belonging to a turnpike road belongs as well to this: the commissioners are trustees for the repair of the roads, and this case is within the prohibition of the 56th clause in the general turnpike act. Order of sessions quashed.

2. *Of the value of the tenement, and how it is to be ascertained.*

Where the same tenement is taken by two tenants jointly, see *post.* (4.) how it affects the value.

If the tenement be under 10*l.* a-year, the justices upon complaint within 40 days, have power to remove the person coming there to reside; if it is not under 10*l.* a-year, they have no power to remove him; and continuing upon the same irremovable for 40 days, he thereby gains a settlement. Upon which it is observable, that the payment of

Of the yearly value of 10*l.*

Poor. (*Settlement.*) [Sect. XII. (2.)]

rent can be no matter of consideration with regard to settlement; for the settlement is obtained before the rent becomes due; for the settlement is not suspended, as in the case of a hired servant, until he had ended his year; so soon as he hath resided 40 days, he is settled without regard to the rent; even as a servant hired for a year became settled in 40 days, before the statute of the 8 & 9 W. and as apprentices are still settled in 40 days, without any regard to serving their time. And with respect to what shall be deemed a settlement for 10l. a-year, sufficient to gain a settlement, hath been adjudged as follows.

South Sydenham v. Lamerton. T. 3 G. Order specially made: a person took a lease of a tenement for 99 years, terminable on three lives, and paid his fine, and the rent reserved was but 7l. but the real value was 13l. — By the court. The quantity of the rent is not material, but the value of the tenement. If there be a lease of land worth 10l. a-year, and a fine be paid, or no rent reserved, yet if the tenement be worth 10l. a-year, it makes a settlement; the settlement depends on the value of the tenement, not on the rent. 2 *Seff. C.* 198. 1 *Str.* 57. 2 *Bott.* 109. 80.

Southwold v. Fokesford. H. 13 G. 2. A person took a lease at the yearly rent of 10l. The landlord agreed to erect new buildings, which improvements were never made.

stated, and adjudications made by them. Here they have stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10l. They state, that he did take a tenement of 10l. a-year at *Kirton*. Indeed they add, that it had been let at 7l. a-year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or six years last been let at 10l. a-year. And the quantity or value of his stock doth not alter the value of the tenement. They also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, That he did it to gain a settlement. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10l. a-year, and the evidence rather proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so. And we must take the case stated to be the whole case. Therefore it was adjudged, that thereby he gained a settlement at *Kirton*. 2 *Seff. C.* 141. 2 *Str.* 1156. *B. S. C.* 166. 1 *Bott.* 132. *pl.* 183.

H. 16 G. 3. R. v. Bilfdale Kirkham, in the north riding of the county of *York*. *Thomas Wilson* went from the parish of *Bilfdale Kirkham* to *Bilfdale Westside*, and there married *Sarah* the pauper, who then rented a tenement of 4l. a-year, and he occupied the said tenement with her during his life. He afterwards died, leaving the said *Sarah* the pauper. Evidence was offered to prove this tenement at the time the man occupied it with his wife was worth 15l. a-year, though let at no more than 4l. — But the sessions rejected this evidence, and determined on the rent actually reserved; which being under 10l. a-year, they adjudged that the pauper was not settled in the parish of *Bilfdale Westside*, by renting such tenement. — By *L. Mansfield*: The justices have done wrong, in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of the value of 10l. a-year any year during the man's occupation of it, he will thereby gain a settlement. The case was sent back to the sessions to receive evidence of the value. Which being certified as above, the court held it a good settlement. *M. S.* 2 *Bott.* 137. *pl.* 189.

Evidence may be given of a value not commensurate with the rent paid.

*R. v. North Bedburn. E. 24 G. 3. Removal from Quar-
rington to North Bedburn*, and confirmed by the sessions. The material part of the case stated, was an agreement between the pauper and certain other persons, by which they agreed to let to the pauper at a certain rent a landfall

The special case must describe the nature of the tenement.

Poor. (Settlement.) [Sect. XII. (2.)]

ery, which imported, (as was stated by the counsel), the
ing of a right to get coals from a certain pit, and also
using of a quantity of machinery, (personal chattels)
nging to the colliery. — But *per Willes J.* We cannot
notice of the meaning attributed to the term, landsale
ery, and said to be so understood in the North by the
e, unless it were so stated to us. Orders confirmed.
l. Caf. 452. 2 Bott. 96. pl. 148.

v. Whitechapel. H. 26 G. 3. Removal from *St. Mary,*
Whitechapel to *Westham*, and quashed by the sessions. The
ber's husband, (*Peter Allam*), hired a house in *W.* at
3s. per ann. and lived in it till his death; he also hired
om at a victualling house in *W.* at 3s. a-week, to be
e use of, and which was used as an office or place for
justices to meet and transact the parish and other public
ness. The room was furnished with chairs and tables,
the landlord was to find firing. And the landlord was
ave the use of the room when *Allam* did not want it.
m had the key, and might have locked it if he would,
did not. *Allam* alone had the concern of and paid for
room. — *Buller J.* There is nothing found as to the value
he fire and furniture, and all we can say is, that he has
ed a tenement of 10l. a-year. Order quashed. *2 Bott. 96.*

47.

v. London Thorpe. T. 25 G. 2. John Ingram took 1

windmill was the sole property of the tenant himself, and it was not fixed in the ground, but detached from it. But in order to confer a settlement it should be so connected with the land as, in legal contemplation, to fall within the description of a tenement. 6 T. R. 377. 2 Bott. 140. pl. 193.

R. v. Llandverras. M. 7 G. 3. *Evan Hughes* rented a tenement of 10l. per ann. in *Llandverras*, and paid the rent to the landlord. He lived in a part of it worth 40s. per ann. and let the rest. He resided on this part above 40 days. And it was held that he gained a settlement by this taking and residence. That ten pounds a-year being stated as the value of the tenement, it had been held sufficient, though the man paid a rent somewhat less than 10l. a-year. But that the undertenants did not gain a settlement. B. S. C. 571. 2 Bott. 134. pl. 186.

So in *Aure v. Newnham.* 13 G. 3. It was laid down by Mr. Justice *Aston*, that a man who takes more than 10l. in yearly value, may let part of it to under tenants, and this will not destroy his settlement, though it will not gain one to such undertenants who pay him less than 10l. a-year. B. S. C. 756. 2 Bott. 121. pl. 173.

R. v. Framlingham. T. 13 G. 3. *S. Churchyard* contracted with *S. Hayle* to hire of him a public house, &c. at the rent of 10l. per annum, *Hayle* to pay all parish rates and charges. And by Lord *Mansfield* and the court, this was a good taking a lease of a tenement of the yearly value of 10l. within the intention and meaning of the act of parliament. It turns upon the credit given the person, now here credit is given to this man for 10l. a-year. He contracted for it at that rent, and he paid that rent to his landlord for it. It was a real and *bonâ fide* taking a tenement of that yearly value. B. S. C. 748. 2 Bott. 135. pl. 188.

R. v. Bilfdale Kirkham. T. 16 G. 3. The pauper's husband went from *Bilfdale Kirkham* to *Bilfdale Wafside*, and there married the pauper, who then rented a tenement of 4l. a-year, and he occupied the said tenement with her during his life. He afterwards died, leaving her (the pauper.) Evidence was offered to prove that this tenement, at the time the man occupied it with his wife, was worth 15l. a-year, though let at no more than 4l. The sessions rejected this, and determined on the rent actually reserved, which being under 10l. a-year, they adjudged no settlement to have been gained by renting such tenement.—Lord *Mansfield*. The justices have done wrong in not receiving evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of

If one rent a tenement of 10l. per ann. and let a part, himself, residing in the remaining part, he will gain a settlement, as having taken a tenement of 10l. annual value.

But the undertenant paying a rent less than 10l., will gain none.

A contract of renting at 10l. per ann. the landlord paying parish taxes, is a good taking of a tenement of the proper value within the statute.

The real value, not the assigned value, is to be ascertained.

Poor. (Settlement.) [Sect. XII. (3.)]

value of 10l. a-year any year during the man's occupancy of it, he will thereby gain a settlement. 2 *Bott.* 137. 89.

v. Hellingly. T. 48 G. 3. Removal from *Hellingly* to *Whelmstone*; and quashed by the sessions. The pauper's land hired a house at *Brighton* by the week, paying 5 shillings a-week for the same, which house he continued to occupy and sleep in. The house so hired and occupied by him is at all times of the year of the value of 2s. a-week if taken by the week; but is not of the value of 10l. per ann. if taken by the year. — By Lord *Ellenborough*. The words of the statute enable the justices to remove a person who "shall come to settle in any tenement under yearly value of 10l.;" that is, upon a tenement, the value of which is to be estimated by its annual value, to be let for the year, at the time of the parties coming to settle upon it. It need not in fact be let for a whole year; it may be let only by the week or the day. But those lettings are not *media* for ascertaining the yearly value if nothing appears to the contrary. But when it is expressly found that the tenement was not of the value of 10l. a-year to be taken by the year, it is impossible for any reasoning to make the matter more clear. The statute, speaking of *yearly* value, means the value of the tenement to be let by the year, 7. R. 41. /

a quarter, and of another a tenement at 6l. a-year, would gain a settlement. *B. S. C. 677. 2 Bott. 120. pl. 171.*

Furthermore: It is to be considered, How far *the same tenement, but lying in different parishes*, shall gain a settlement: As to which it hath been adjudged as follows:

T. 3 G. South Sydenham v. Lamerton. A person rented a tenement of 10l. a-year, being one entire tenement, but lying in two parishes. The question was, Whether this gained a settlement? — By the court: If the tenement be entire, though the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8l. lie in one parish, and a tenement of 3l. in another. *1 Str. 57. 1 Sess. C. 115. Foley, 81. 2 Bott. 115. pl. 165. 128. pl. 171.*

Same tenement but lying in different parishes.

A tenement lying part in one parish, and part in another parish, will gain a settlement.

But the question in this case only was, Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10l. but lying in different parishes, shall gain a settlement? So that the determination in this case, as to this latter point, was extra-judicial. And the reason given by the court in this case doth extend as well to different tenements, as to one entire tenement, viz. The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a tenement of 10l. a-year. Now the man's sufficiency is not the deft, because 6l. a-year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10l. a-year in any one parish; and it would be hard to adjudge that therefore they gain no settlement. *id.*

M. 3 G. 2. Elsted v. Hallibourne. The case was this: A person rented a tenement, consisting of a farm-house and lands of 12l. 10s. a-year; which house and land laid contiguous, and had been usually letten together, and occupied by the same person, but the house and so much of the land as together amounted to 9l. a-year, lay in one parish, and 3l. 10s. in another parish. By the court: This was held to be a settlement, on the authority of *South Sydenham v. Lamerton*. *2 Sess. C. 130. 2 Str. 849. 2 Bott. 116. pl. 166.*

Further yet; it remains to be considered, how far *two distinct tenements, one being in one parish, and another being in another parish*, shall be deemed a sufficient tenement within the act, whereby to gain a settlement; For although in the case of *South Sydenham v. Lamerton* aforesaid, the court seemed to be of opinion that two such tenements would not

Different tenements and lying in different parishes, will give a settlement.

Poor. (Settlement.) [Sect. 2]

a settlement; yet that (as hath been observed) is not the point in question. And in the case of *Andwich v. Studland*, E. 8 G. 2. it was resolved that a person rented a house in *Studland* at 30s. a-year, and lived in it about two years, he took lands in the same parish at 1l. a-year, on which there was no house; and he held the said lands two years: All which time he continued to rent also the said house in *Studland*. — By this it hath been a question, Whether two distinct settlements at different times (where neither of them amounted to 10l. a-year in value) should make a settlement: it is now settled that it does. And it is the question whether the taking were distinct or entire, or in one parish. The settlement is in the parish where the person takes the lands.

The ground of these resolutions is the ability of such a value; which excludes the possibility of the person being likely to become chargeable to the parish. C. 44. 2 Bott. 117. pl. 168.

E. 8 G. 3. *St. Lawrence v. St. Maurice*, both Bench and Exchequer. *Richard Gradidge*, husband of the pauper *Mary Gradidge*, was settled in the parish of *St. Lawrence* from *Lady-day*, at 3l. 10s. a-year, but resided there only six weeks only and then quitted it, and returned to the parish of *St. Maurice*, which *Warne* refused to receive him, whereupon *Gradidge* left it with a neighbour, before the case came on for judgment.

M. 27 G. 3. Bedworth v. Fillongley. Two justices removed *Mary Watson* widow, and her five children, from *Bedworth* to *Fillongley*. The sessions confirmed the order, and stated the following case: That *John Watson*, late husband of the pauper, rented a farm of 40l. a-year at *Fillongley*, and being distrained on for rent, his brother purchased for him out of the distress two cows and three sheep, with which he came to *Bedworth* about *Lady-day* 1783, where he took a house and land of 8l. a-year rent, and resided thereon about three years; during which time the rent was paid thus, (*viz.*) the first half year by himself, the second half year by the parish of *Fillongley*, the third half year by himself, and the fourth by distress: That about the said *Lady-day* 1783, *Thomas Watson*, in a conversation with his brother *John Watson*, concerning his family and poverty, said, "I am sorry for your family, and therefore I will give you a close in *Astley* (an adjoining parish) containing about four acres, to enjoy as long as I please, and to take it again when I please, and you shall pay nothing for it:" *John* enjoyed the said close, which was worth 2l. 10s. a-year, for three years, during which time his brother *Thomas* paid both the land-tax and poor-rates for the same; and all the tillage was done by the servants and horses of *Thomas*, and they also got in the harvest: That one year the said close was sown with *John's* wheat procured by the gleanings of his family; and in the last year the same was sown with *Thomas's* corn, at whose expence the crops of the said corn were carried to *John's* house: That the cattle of *Thomas* were never put into the said close, except for tilling the land; but that the cattle of *John* were upon the said close during the time he so enjoyed it.—*Alburt J.* In all cases upon settlement law, it is the safest way to adhere to the words of the act; now taking it upon the words, nothing can be more clear; they are "that it shall and may be lawful upon complaint made by the churchwardens, &c. within 40 days after any person or persons coming to settle as aforesaid in any tenement under the yearly value of 10l. for any two justices, &c. of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by warrant to remove, &c." The act does not say any thing about ability; that is not the criterion. And if the party come to reside upon a tenement of 10l. a-year, he cannot be removed, and then he gains a settlement by 40 days' residence. But if ability, or rather confidence, were to be taken into consideration, according to the case reported in *Strange*; yet if a man have sufficient credit and confidence reposed in him by another, as to be trusted with a tenement of 10l. a-year value, even out of charity, it is sufficient to answer the intent of the statute, because such an one is not likely

Living upon a tenement of the value of 10l. a-year, although a part thereof is given out of charity, and is in another parish, gains a settlement.

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y to become chargeable. Therefore neither
ds, nor the meaning of the act, was this man
so he gained a settlement. — *Buller J.* It is
this is the first case which has come directly
t for a construction on this part of the statute
ds of the act cannot admit of a doubt. They
persons *coming to settle* in a tenement of 10l. a-
not be removed. As to the question of fraud,
e in that, because that question is open to the
y case as it arises. Besides, it is the peculiar j-
ne justices, and not of this court, to say, Wh-
icular case be fraudulent or not; if they do not
be fraudulent, it is not competent for this co-
it is. I doubt whether in this case the order
ht not be founded on the idea, *that it was frau-*
had said so, we should not have differed fr-
they have not found it so. Next, as to the q-
ty: It seems to me that this idea is founded
words of *South Sydenham v. Lamerton* (a); but
tentively considered, will not warrant the co-
upon them; for the credit which he has is on
he has to pay, but that is only as between hi-
lord; the credit is given by the landlord. L. Ch.
says, "If a man hires a house at a small rent,
yet if the house is worth 10l. *per ann.* it ma-
for the settlement depends on the value

above 10l. *per ann.* and are to be applied to the case then before them, and are not applicable to any case where the renting is not more than 10l. *per ann.* This is more decisive on account of what is said in the conclusion of the case; where describing the poor persons whom the act intended to exclude from gaining settlements, *Pratt J.* says, "such persons as are not capable of hiring a tenement of 10l. a-year." There are no such words in the act; but if we have recourse to the preamble, it speaks of rogues and vagrants, and persons who are burthen some to the parish: These therefore are the persons of whom the statute speaks as likely to become chargeable, and therefore the expressions in that case are only to be considered as *particular instances of persons* who from their situation in life *were not likely to fall* within the description of persons in the preamble of the act. But one who is settled on a tenement of 10l. a-year is not within the act. It has been contended, that the pauper never had the tenement; but it is impossible for us to say so, after the justices have stated that he had it under an agreement, which made him tenant at will; for what is to become of the estate after he had sown it with corn? Its being gained by gleaning is not material; for supposing he had stolen it, it would have been just the same, he would have been entitled to the growing crop: He was then in possession of a tenement of 10l. a-year, and could not have been turned out by his brother, therefore this is a sufficient taking of a tenement within the statute. — Order of sessions quashed. 1 *T. R.* 458. 2 *Bott.* 123. *pl.* 175. (a)

4. Of joint occupation.

With respect to the taking or occupying a tenement jointly, it has been determined as follows:

M. 25 G. 2. Marden v. Barham. Two persons jointly hired a house and land at *Marden* for 16l. a-year, and jointly occupied the house and tilled the land for the said year, and jointly paid the rent, that is, each the like sum. It was urged that this gained no settlement to either of them. And a case was cited, between *Croft* and *Gainford* at *Durham* assizes 1733, (b), which was a joint taking of 14l. a-year, each paying separately, the landlord not caring to let to either singly.—And the two judges (*L. Ch. J. Eyre* and *Reeves*) to whom it was referred, held it no settlement; because the statute requires the person's taking a tenement of 10l. a-year value: Whereas this practice of calling in a partner in the taking would, if admitted equivalent to a sole taking, evade

Renting jointly a tenement which when divided, as to value, between the tenants, will not produce 10l. a-year for each tenant, will give no settlement to either of the parties.

(a) *R. v. Fritwell*, *post.* p. 410. (b) 2 *Bott.* 130. *pl.* 181.

and

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frustrate the statute, and let in an indefinite number of
 lies all to be settled upon one tenement of 10l. a-year
 c. On the contrary it was argued, that each was legally
 nt of the whole, both being liable to the landlord for the
 le rent. — By the court: This was not sufficient to gain
 allement. Whatever remedy the landlord might have
 nst the occupiers of the land for his rent, the act of par-
 ent in the present case considers only the right; which
 rly is but to one half, and that half doth not amount
 he value of 10l. a-year. *B. S. C.* 311. 2 *Bett.* 134.
 84.

29 & 30 G. 2. *Little Tew v. Duns Tew.* *Richard*
Kyns the pauper, together with *John Goodwin* his father-
 in-law, rented a tenement at *Duns Tew* at 81l. a-year, as
 partners; and lived there 12 years. And being about to
 e *Duns Tew*, *Goodwin* alone went to Mr. *Keck's* agent at
le Tew, and took a farm of 52l. a-year, for four years,
 or the said taking, and before the farm was entered upon,
Kyns inquired of *Goodwin*, Whether he depended upon his
 g with him to *Little Tew*? To which *Goodwin* replied,
 he did; for he could not go without him. They both
 oved from *Duns Tew* to *Little Tew*, with their whole
 stock, to the value of more than 100l.; and ma-
 d the farm together for seven years, both of them
 ing thereon. Mr. *Keck* gave his receipts for the rent to

gained a settlement in *Little Tew*. For, being taken in partner by *Goodwin*, he is to be considered as having an interest in the farm, at least as tenant at will to *Goodwin* of the moiety of a farm worth 5*l.* a-year for the whole of it, and consequently his moiety above 10*l.* a-year. A tenancy at will, even in the case of a certificate person, is sufficient to gain a settlement, as was determined in the case of *Cranley v. St Mary's, Guildford*, H. 8 G. B. S. C. 398. 2 Bott. 118. pl. 169.

H. 35 G. 3. *R. v. Seamer*. *John Yates* and his wife and family were removed from *East Haslerton* to *Seamer*, the sessions confirmed the order, and stated the following case: *T. Yates* brother of the pauper took a farm of Sir C. Sykes Bart. at *East Haslerton* at 176*l.* a-year. *John* resided with him upon the farm, they having agreed to be joint partners in the stock and farm previous to *Thomas's* taking it, but *John* did not consider himself as a tenant to Sir C. Sykes. *John* advanced 120*l.* towards the stock and farm. *Thomas* was the only person rated in the parish rates, though *John* said he conceived himself answerable for the payment of his part, and to pay interest accordingly. After seven months they parted; there was no account of receipts and disbursements. Upon parting it was agreed, that *John* was to allow 20*l.* out of what he had advanced, and to be repaid the remainder, which took place. — The court, without argument, were of opinion, that this case was governed by the above case of *Little Tew* and *Duns Tew*. And L. Kenyon Ch. J. added, that whether the pauper were considered as a joint tenant with his brother, or as under-tenant, he equally gained a settlement in *East Haslerton*. Both orders quashed. 6 T. R. 554. 2 Bott. 127. pl. 177.

Being joint partner with a person at a farm of 176*l.* a-year, gains a settlement.

E. 33 G. 2. *Kniveton v. Tiffington*. The pauper *Isaac Wibberley*, being settled at *Tiffington*, took a farm in *Kniveton* of 8*l.* a-year; and also at the same place, jointly with one *Thomas Hill*, took another farm of 3*l.* 15*s.* a-year, and at the taking of the said farm of 3*l.* 15*s.* it was agreed between the said *Isaac Wibberley* and *Thomas Hill*, that *Thomas Hill* should have and take one half of the corn and hay of the said 3*l.* 15*s.* farm; and that the said *Isaac Wibberley*, after that the said *Thomas Hill* had taken and carried away his half part of the said corn and hay, should have the whole farm of 3*l.* 15*s.* till *Lady-day* following, paying to the said *Thomas Hill* 4*s.* for the said *Hill's* share of the said farm. The question was, Whether this was a tenement of the yearly value of 10*l.*? The counsel for the parish of *Tiffington* argued, that *Wibberley* the pauper was liable (as being joint tenant with *Hill*) to answer for and pay the whole 3*l.* 15*s.*; and moreover, that he was sole tenant of that farm for and during the

Renting one entire tenement and jointly part of another, will if the whole be of sufficient value, gain a settlement.

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last half year; or, even taking it at the strictest, that he really and properly to pay 10l. 1s. 6d. a-year; for he pay 8l. and half of 3l. 15s. (which is 11. 17s. 6d.), 4s. more for the last half year, which is in all 10l. 1s. 6d. But the court unanimously held, That this tenement, rented in *Kniveton*, was under the yearly value of 10l. Act fixes the value at 10l. And the value must be rated by the rent, and always is taken to be according to the rent (*a*). And here the rent is 8l. a-year, and the value of 3l. 15s.; which two rents taken together do not amount to 10l. Indeed, he was to pay *Hill* 4s. for the advantage he was to have, after the crop was off: But an agreement of this sort, between the two joint tenants, cannot be considered as a rent. *B. S. C.* 499. 2 *Bott.* 134. 85.

13 *G. 3.* *Awre v. Newnham.* The pauper *Hathaway* and one *Richard Mann*, his wife's father, jointly held and occupied an estate at *Newnham* of 80l. a-year, for 99 years. The said *Richard Mann* dying about the end of the year, the said *Denton* soon afterwards did alone take a lease of one *Richard White* at *Awre*, of the yearly rent of 80l. and another estate consisting of lands of one *John Serjeant* at *Awre* aforesaid, at the yearly rent of 8l. The said *Richard Mann* leaving a widow, and she and the said *Denton* being at the death of the said *Richard Mann* jointly possessed of

annual value than 20l. this will not gain a settlement to either of them. But a man who takes more than 10l. in yearly value, may let part of it to under-tenants: and this will not destroy his settlement, though it will not gain one to such under-tenants, who pay him less than 10l. a-year, as was determined in the following case of *Llandverras*. This woman, the widow *Mann*, was in the nature of an under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the house, and likewise the lands. Neither of the landlords knew of any connection between the widow and him: and he only was personally responsible for the rent. They were not partners in taking the tenement, though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person who alone took it lose his settlement by letting in a joint occupier. *B. S. C. 756. 2 Bott. 121. pl. 173.*

M. 7 G. 3. Llandverras v. Northop. Evan Hughes, father of the pauper, rented a tenement of 10l. a-year, and paid the rent to the landlord. He lived for above 40 days in a part of it, which part was of the value of 40s. only. And immediately after his taking the tenement, he let the residue thereof to under-tenants, without residing thereupon at all himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10l. a-year value, and he ought to occupy the whole 10l. a-year; otherwise, many different poor families might be introduced into a parish upon one such taking. It would quite evade the act if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying the same tenement. — By the court; In case of a gross fraud, the sessions no doubt will find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case, but that *Hughes* was the tenant and liable to the rent, and had credit for the whole; and therefore he is as much settled as if he had rented a tenement of 10l. a-year, and let lodgings. The act doth not require a person renting a tenement of 10l. a year to occupy it; it is enough if he rents it, and resides forty days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10l. therefore they do not hereby gain a settlement. *B. S. C. 571. Black. Rep. 603. 2 Bott. 134. pl. 186.*

Renting 10l. a-year, although part of it is let off to under-tenants, gains a settlement.

Poor. (Settlement.) [SECT. XII. (5.)]

Who may gain a settlement by renting a tenement: and herein, as to the question, to whom credit is given: and next, as to the character in which a person rents a tenement: and lastly, as to the ability of foreigners in this respect.

T. v. Butley. T. 10 & 11 G. 2. In this case it appeared the pauper took a lease of a windmill in *Benball*, for three years, but had a surety who engaged for the payment of the rent thereof for the said three years. And *Page J.* held that the parish officers had nothing to do to look into the fact of the giving of the security. That it is the credit in taking such a tenement that is the point. *B. S. C. 107. 10tt. 93. pl. 142.*

T. v. Hooe. M. 44 G. 3. The pauper took a house in *Benball* at 11 l. per annum of one *Pococke*, then overseer of the parish of that parish: previously to this taking, one *Porter* had agreed to take part of the premises at 5 l. per annum, and the pauper would not have given so much for the premises if *Porter* had not promised to take a part of them under him. *Porter* guaranteed the rent to *Pococke*, who would not have taken the premises without such guarantee. But when the agreement was made between the pauper and *Pococke*, the latter expressly he made the agreement with the pauper only, and considered none but him as his tenant. The sessions

tenant, and all the liabilities of one, and against whom, as such, every proceeding in law may be had, he gains a settlement by 40 days residence on such a tenement. And *Grose J.* said, that it was not necessary the pauper should have paid the rent; it was sufficient he had credit to be trusted with a tenement of the annual value of 10l. It was not necessary for the tenant to have paid the whole rent; for though the rent were paid by others, yet as he had credit for the whole premises it was sufficient: and he shewed that he deserved that credit in the present instance, for he actually paid the whole rent. (*As appeared also by the case stated.*)

And per *Lawrence J.* It is argued that unless credit were given to the pauper for 10l. a-year in value of the rent, no settlement can be gained by him. But I do not know that that is a necessary conclusion. The stat. 13 & 14 C. 2. c. 12. gives power to the justices to remove, on complaint within 40 days, any person "who shall come to settle in any tenement under the value of 10l. &c., unless certain things are done which are required by that statute;" but they have no power given them to remove any person coming to settle in a tenement of that value or upwards. Such a person is not submitted to their jurisdiction at all. The question therefore is not a question concerning the credit of the party, but whether in point of fact he came to settle; i. e. acquired the interest of a tenant in a tenement of that value; for if he did, the justices had no power to remove him. Now upon the facts stated, it is apparent that the pauper had an interest to that amount in a tenement, as the tenant thereof, which prevented him from being an object of removal. Per *Le Blanc. J.* It is immaterial whether credit were given to the pauper for the rent, if he were the tenant of the whole premises. 4 E. R. 362. 2 Bott. 143. pl. 196.

But if a lease or interest in a tenement under 10l. a-year, devolves upon a person by executorship or other act of law, this is not within the statute, as a taking a lease of a tenement; but such person continuing upon the tenement forty days irremovable, thereby gains a settlement. As in the case of

Coming to a tenement by executorship altho' under 10l. a-year gains a settlement.

Uttoxeter v. Marchington Woodlands, T. 5 G. 3. The pauper *William Gilbert*, was settled at *Uttoxeter*. His mother rented and resided upon a farm of 22l. a-year at *Marchington Woodlands*; which she devised to her five children, and made the pauper and her three other sons executors of her will, and died. The pauper alone proved the will, and entered as her executor, and resided upon the farm 12 or 13 weeks. He afterwards returned to *Uttoxeter*; but continued to go over to *Marchington Woodlands* to give directions from time to time, and had a servant upon the farm till the *Lady-*

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following. The question was, Whether he hereby
 ed a settlement at *Marchington Woodlands*? — By the
 t: It is very true, that a share not amounting to 10 l. a-
 , of a tenement of above 10 l. a-year in value, will not do.
 here he has a right as executor. The value thereof is
 ly immaterial; because, by common law, no person can
 removed from his own. And one who has a right to
 e irremovably, doth thereby gain a settlement if he re-
 40 days. *B. S. C.* 538. 2 *Bott.* 469. *pl.* 532.
 35 *G.* 3. *R. v. Stone.* Two justices removed *E. Syme*
 Salt and *Enson* to *Stone* in *Staffordshire*. The sessions
 irmed the order, and stated the following case: That
 pauper was settled in *Stone*; that he went to live with
 father-in-law, *E. Bentley*, in *Salt* and *Enson*, who rented
 year to year a cottage and about six acres of land, under
 yearly value of 10 l. *Bentley* died, and by his will gave
 his personal estate and effects to the pauper in trust, that
 would allow the testator's wife a sufficient maintenance
 out during her life; and, at her decease, his personal
 eand effects should be divided amongst his (the testator's)
 children, the pauper's wife being one; and he appointed
 pauper sole executor of his will. Upon the testator's
 ase, the pauper possessed himself of all his personal estate
 effects, and continued in possession of the cottage and
 s. without coming to any agreement with the landlord.

it. The distinction taken between a tenant from year to year and a tenant for a term of years, is rather a distinction in words than in substance. A tenant from year to year is entitled to estovers, and the same advantages as a tenant for a term of years. In truth, he is a tenant from year to year as long as both parties please. And considering how many large estates are held by this tenure, it would be dangerous to say, that the term ceased at the end of the year, because then the landlord might lose his right of distress. Although on my first reading this case, it struck me as a very minute interest to confer a settlement; on consideration I am satisfied that we cannot, without overturning a variety of cases, determine that the pauper did not gain a settlement by residing on it for forty days. The other judges gave their opinions to the same effect. Both orders quashed. 6 T. R. 295. 2 Bott. 493. pl. 552.

E. 31 G. 3. R. v. *Netherseal*. *Thomas Taylor* and his wife and children were removed from *Finderne* to *Netherseal*. The sessions confirmed the order, and stated the following case: That the pauper being settled in *Netherseal*, married the daughter of *J. Shipman* of *Finderne*, who rented and lived upon a tenement there of the yearly value of 11l. The pauper and his wife continued to live in the family of *Shipman* until his death, which happened about two years after the pauper's marriage. *Shipman* made a will, and, after bequeathing to his son and an unmarried daughter 5s. each, gave the pauper's wife all the rest of his property and took upon his tenement, of the value of upwards of 40l. and appointed her executrix of his will. The pauper possessed himself of this property, and paid the above legacies about a year after *Shipman's* death. The pauper's children got the will out of a box and tore it to pieces. The pauper never proved the will on account of the expence, but continued with his wife the executrix to occupy the tenement at *Finderne*, from the decease of *Shipman* on the 9th of Nov. 1774, until the *Lady-day* following, and paid the rent for the same. — *L. Kenyon* C. J. thought if the question had depended on the title the pauper claimed under the will, it would not have been sufficient to give a settlement (a). But

being stated that the pauper resided for more than forty days on a tenement of more than the yearly value of 10l. for which he paid rent; although it was said that he might have been turned out of possession by some other person having a

Coming to a tenement by ex-ecutorship, and residing thereon 40 days, although the will be never proved, gains a settlement.

(a) See this part of the case, *post*. title, *Settlement by estate*: to which these cases more properly belong: They, however, in some degree illustrate the preceding cases, and are therefore inserted here well as under the next head.

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rior right; but it was not suggested who had any better; and the landlord who received the rent could not turn out. — *Asburs J.* In order to acquire a settlement by a tenement of 10l. a-year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord; for in such case the law implies a contract. — *Per J.* Supposing there were no will in this case, the persons entitled to the property of the pauper's wife's father were the pauper's wife and her brother and sister, and it were necessary to go beyond the implied contract between the landlord and the pauper, here is sufficient evidence to shew that all the parties interested consented to the pauper's continuing in possession of these premises, for the other two children and daughter received 5s. each in lieu of all their right claim to their father's property, therefore all the parties interested agreed to this occupation by the pauper, and consequently there is no pretence to say that this was a holding wrong. — *Grose J.* of the same opinion. Both orders shd. 4 *T. R.* 258. 2 *Bott.* 126. *pl.* 176.

R. v. Denbigh. *T.* 44 *G.* 3. *R. Hughes* agreed with the keeper in *H.* to go and receive the tolls in the turnpike road in *H.* as the servant, and for the use of the toll taker, which he (*Hughes*) was to be paid 3s. 6d. per week.

bourne : and confirmed by the sessions. *Ann B.*'s maiden settlement was in *Eastbourne* : she married *J. B.* a *German*, by whom she had the children mentioned in the order. The said *J. B.* was, at the time of the removal, resident in a house at *Seaford*, of above the value of 10*l.* exercising therein the trade of a baker. His trade declined at *Seaford*, and he thereupon thought he could exercise it with more advantage at *Eastbourne*. The wife and children thereupon became chargeable, and were removed as above. The husband acquiesced in every thing which took place with regard to the removal; accompanied them to *Eastbourne* and afterwards continued to reside there with them.—*L. Ellenborough C. J.* This man was not an alien enemy, but a *German* by birth; an alien amy; and as such, though he may not take a lease of a dwelling house or shop, yet he may occupy a tenement of 10*l.* a-year, and carry on his trade there like any other person. Then he has that interest which may enable him to gain a settlement by the provision of the legislature. Orders quashed. 4 *E. R.* 103.

6. Residence; as to time and place.

Less than 40 days residence upon a tenement of 10*l.* a-year will not gain a settlement. As in

Forty days' residence is necessary.

Dilwin v. Leominster, T. 8 & 9 G. 2. *William Smith* the pauper, agreed for a farm in the parish of *Eardisland*, to hold from *Candlemas*, at 44*l.* yearly rent; and in *April* following he sowed about 15 acres of the land with grain; and in *May* following he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized and driven away, for rent due to his former landlord at *Leominster*. Whereupon the said *Smith* then came to a new agreement with his landlord in *Eardisland*, and agreed to quit that farm, and to continue in the farmhouse and garden, and to have a small parcel of pasture with it, at the rent of 3*l.* 10*s.* and he continued thereupon in the said parish of *Eardisland* till *Michaelmas* following.—By *L. Hardwicke C. J.* There was no inhabitancy for 40 days in *Eardisland* under the lease of 44*l.* a-year; and therefore there can be no settlement gained under it. And the next agreement with his landlord in *Eardisland* was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished. *B. S. C.* 54.

H. 37 G. 3. R. v. Llanbeddorgoch. Two justices removed the pauper and his family from *Llanbeddorgoch* to *Pentraeth* both in *Anglesea*; the sessions quashed the order and stated the following case: The pauper rented a tenement in the parish of *Llechyllebod*, called *Pewrbyw*, of one *Griffith* for the year 1795. In *May* 1795 he received notice to quit at *All Saints* follow-

If a person be forcibly removed from his tenement, within 40 days, it prevents his settlement.

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The pauper said he had no place to go to, and if he is compelled to quit, he would take down a barn he had upon the farm. *Griffith* then said, suppose we exchange, you shall go to *Weyú Emád*, a tenement in *Llanbedrog*, that *Griffith* farmed of one *Pritchard* at the rent of £ 10s. a-year, to which the pauper agreed, and promised to take down the barn. It was then agreed between them, that they were not to mention the matter, lest the respondents should hear of it, and prevent the pauper getting possession of the farm at *Weyú Emád*. On the 16th of November 1795, he removed to *Weyú Emád*, but did not remove his furniture there lest the respondents should see him, having been informed if he got into possession and slept in the house one night, he could not be turned out. The pauper resided 29 days on the premises, when *Pritchard*, aided by some of the parishioners and overseers of the poor of *Llanbedrog*, forcibly removed him and his family from *Weyú Emád*, and thereby prevented him residing there forty days, he has ever since been forcibly kept out of the premises. The pauper's prior settlement was in *Pentraeth*. The pauper did no other act to gain a settlement in *Llanbedrog*.—It was argued in support of the order of sessions, that if the pauper had resided 40 days in *Llanbedrog* he would have gained a settlement, and as he was prevented by parish officers of *Llanbedrog* from residing there by

reside in the house in *St. Martin's* parish until the 6th of *May* following, being seven weeks, the husband remaining all the time in the *Marshalsea* prison, when his wife and children went to him there, and he gave up possession of the house in *St. Martin's*, and the landlord took part of his furniture for the seven weeks rent. — The question reserved for the opinion of the court was, Whether the husband *J. Lord* gained a settlement in the parish of *St. Martin's* under the above circumstances — *L. Kenyon C. J.* said, that no settlement could be gained by a residence on a tenement for a shorter period than 40 days; and though in the case of *R. v. Leeds (a)* it was only decided that the justices ought not to have removed the pauper from *Blackfordly* during the continuance of his lease, the court added that “if his lease at *Blackfordly* had been at an end, his last 40 days residence at *Leeds* might have borne a different consideration;” evidently intimating an opinion that 40 days residence is necessary to give a settlement. Order of sessions confirmed. 7 *T. R.* 466. 2 *Bott.* 154. pl. 204.

T. 34 G. 3. R. v. South Lynn. Two justices removed the four infant children of *Ann Howard* widow, from *South Lynn* to *East Bilney*, both in *Norfolk*. The sessions quashed the order, subject to the opinion of this court on the following case: *C. Howard* the father of the paupers was settled in *East Bilney* prior to 24th *Oct.* 1792; on 23d *Oct.* 1792, the said *C. Howard* being then and some time before in possession of a cottage and land in *Wiggenhall St. Peter's* in *Norfolk*, at the yearly rent of 2l. 12s. 6d. hired a house in *South Lynn* at the yearly rent of 9l. and paid 10s. 6d. in part of the rent, and on the following day he and his wife, and their said four children entered into possession, and resided thereon till his death on the 8th *Nov.* 1792, still keeping possession of the cottage and land in *Wiggenhall*. *C. Howard* died intestate, and no letters of administration have been granted to his widow, or any other person, but she kept possession of and occupied the house and cottage in *South Lynn* and *Wiggenhall*, but she and her children resided in *South Lynn* until 11th *Dec.* 1792, and on her quitting the house at *South Lynn*, she paid the landlord 12s. which, with the money paid him before by her husband, was for half a quarter's rent. After this she remained in possession of the cottage in *Wiggenhall*. — By *L. Kenyon C. J.* If we were to decide on the express words of the act of parliament, we should overturn 99 cases out of 100 that have been determined on this statute. If a mere residence on a tenement for 40 days irremovable,

Residence for 33 days by a widow on a tenement of 20l. a-year, cannot be coupled with a residence on the same tenement with her husband for 16 days preceding, so as to gain her a settlement.

(a) *Post.* title *Settlement by estate.*

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is sufficient to give a settlement, every lodger and every person residing for that length of time would then acquire a settlement; but *in order to gain a settlement by residing on a house of the yearly value of 10l. the party must stand in the relation of tenant to the property for 40 days.* Here there was no choate right in the husband, and afterwards in the widow, which, if completed by a full residence of 40 days in either case, would have been sufficient; but that one necessary act, residence of 40 days by the same tenant to the property, was wanting. The husband after residing 16 days on the estate, died, and then the wife resided on it; but what privity was there between the husband and wife as to this property? It appears that she did not take out letters of administration so as to give her a settlement by residing on her estate for 40 days, nor did she reside on the estate for that time as tenant of the premises; and indeed she was not solely entitled to administration. The case of *R. v. Netherfeal* is different from the present, because there the estate was bequeathed to the widow, whose second husband lived 40 days on it; but here there was no privity of contract or of inheritance whatever between the pauper and her late husband, and we cannot connect the residence of the husband as tenant, with the residence of the widow as tenant, so as to complete the 40 days' residence by both. Though this case is new in specie, it is not new in principle; and upon the

though occasionally absent, yet he might be looked upon as virtually resident at *Ludgate*, which was the place where he came to settle.

T. 25 G. 3. *R. v. Topcroft*. The pauper rented a farm in *Kempnell* at 30 l. a-year, and resided on it from *Lady day* 1779 till *Christmas* 1781, when he went with his wife to reside with his son-in-law at *Topcroft*, taking with him all his furniture and the stock remaining on his farm at *Kempnell*; he resided with his son-in-law at *Topcroft* upwards of 40 days before he delivered up the possession of the farm in *Kempnell*, but he did not hire or occupy any land or tenement whatever in *Topcroft*. — The sessions confirmed the order by which he was removed to *Topcroft*. — *Bearcroft* shewed cause and said, the principle of the poor laws was, that no person could be removed but those which were likely to become chargeable; renting 10 l. a year was made the test of ability, and the pauper having done so, and continuing 40 days in *Topcroft*, gained a settlement. — *Wilson, contra*: The right to a settlement from 10 l. a-year arises not from renting it, but from coming to reside upon it; here, on the contrary, the pauper runs away from it; and he cited the case of *R. v. Llanverras*, to shew that the residence must be in the parish where the tenement or some part of it lies; and of this opinion was the court; and *L. Mansfield* said, Even if residence in one parish and occupation in another were sufficient, here is no such occupation, for he had run away, and left his tenement. Both orders quashed. 2 *Bott.* 149. pl. 199.

The residence must be in the parish where the tenement or some part of it lies.

T. 27 G. 3. *Knighton v. St. Margaret's in Leicester*. *Robert Hardy* and his three children were removed from *Knighton* to *St. Margaret*. The sessions quashed the order, and stated the following case: — The pauper being settled in *St. Margaret*, took a windmill in that parish of ten guineas a-year, at *Lady-day* 1778, and occupied it for one year. On 30th of *April* following he married *Anne* the daughter of *Samuel Ward* of *Knighton*, which is a township in the parish of *St. Margaret*, but distinct as to the maintenance of the poor. Before the marriage, *Ward* said he would give him house-room till he could provide himself; and on his marriage, he went accordingly to reside with his father-in-law at *Knighton*, whose house was about a quarter of a mile distant from the said mill; and he continued there until the death of *Ward* in 1786. During the time he occupied the said mill, or afterwards, he neither rented nor occupied any land in *Knighton*. During the last half year he rented the said mill, he kept a servant, who resided with him in *Ward's* house as part of his (the pauper's) family. The pauper believed it was known to the township of *Knighton* that he rented the mill

Same point.

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, because he served some of the inhabitants there with
[and they] knew him to be a miller.—*Asburst J.* delivered
opinion of the court (after taking time to consider):
the question in this case is, Whether the pauper gained a
settlement in the parish where he rented a tenement of the
yearly value of 10 l., or in the parish where he resided, oc-
cupying at the same time a tenement in another parish?
[We are all of opinion that he did not gain a settlement in
Knighton, because, in order to gain a settlement by renting
a tenement per annum, there must be a residence either on the premises,
or at least in the parish where some part of the premises lies. The
case *v. Topcroft* is decisive of the question; and there are
two or three other cases (a) which confirm this doctrine,
where it has been taken for granted that there must be a
settlement. Order of sessions quashed. 2 T. R. 48. 2 Bott. 150.
100.

2. 37 G. 3. *R. v. Fritwell.* Robert Hearne and his fa-
ther were removed from *Stoke Lyne* to *Fritwell*. The sessions
affirmed the order and stated the following case:—*Thomas*
Hearne the pauper's father, about 22 years since rented two
houses in *Stoke Lyne*, one at 35 l. and the other at 10 l.
year; during the last four months that he occupied the
latter farms, he and his family dwelt in the adjoining parish
Fritwell, in part of a house belonging to a relation, who
permitted him to live in it rent free: The house consisted

tenement held under one landlord, nor all living in one parish, for that distinct tenements held under different landlords, and lying in different parishes may be joined together, and provided they all together amount to the annual value of 10l. they will confer a settlement on the party: And that being once decided, I think it puts an end to this question. Here the pauper's father, who rented two tenements in *Stoke Lyne*, went to the parish of *Fritwell*, where he entered into part of a house forming a distinct tenement by itself, and belonging to his relation, where he was permitted to live, but not, as has been argued, out of charity. This is not like one of the cases cited, where the pauper was taken into the house of his son-in-law as a lodger; for here were two separate tenements, the whole of one of which he occupied, and I am not prepared to say that his relation could have turned him out of possession on a day's notice; and though it is stated in the case that the pauper paid no rent in money, it appears that there was an equivalent; there was a *quid pro quo*; the pauper brought all his dung and manure from his other tenements, and this relation had the benefit of it. As therefore he was in the occupation of more than 10l. a-year in the whole, and some part of it lay in the parish of *Fritwell*, I am of opinion that this case was properly decided, as well by the justices who removed the pauper, as by those who confirmed the order on hearing the appeal. The other judges of the same opinion. Both orders confirmed (a). 7 T. R. 197. 2 Bott. 153. pl. 203.

E. 39 G. 3. R. v. *St. Mary, Lambeth*. *John Taylor* was removed from the parish of *St. Olave* to the parish of *St. Mary, Lambeth*, both in *Surry*. The sessions confirmed the order, and stated the following case:—The pauper about four years ago took a tenement at the yearly rent of 12 guineas in *St. Mary, Lambeth*, and continued tenant thereof until 29th September 1797. He resided in that tenement with his wife and family from the time of taking it until 24th June 1797, when he took a lodging for the convenience of his business, at the rent of 8l. 10s. a-year, in the parish of *St. Mary le Bone*, where he occasionally slept, leaving his wife and family at the house in *Lambeth*: Both tenancies expired on 29th September 1797. The pauper slept sometimes in *Lambeth* parish, and sometimes at his lodgings in *St. Mary le Bone*, and for above forty days in the whole upon the tenement in *St. Mary le Bone*, and he slept there the last 30 nights of that tenancy. His wife and family never accompanied him or slept at the lodging in *St. Mary le Bone*, but remained at the house in *Lambeth* until about three weeks previous to Michaelmas day 1797, when she went away and took the furniture

Where a residence is for above 40 days in different parishes, the settlement is gained where the person lodges the last night.

(a) See *R. v. Fillongley*, ante, p. 393.

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y with her.—The sessions were of opinion that the pauper's settlement was in *St. Mary Lambeth*.—The court said there could be no doubt but that the pauper's settlement was in the parish of *St. Mary le Bone*, where he had a tenement above the annual value of 10*l.* when joined to the other *Lambeth*, and in which former tenement he had resided on the whole above 40 days, and where he had slept the last night. The question was too plain for argument. Both sides quashed. 8 *T. R.* 240. 2 *Bott.* 155. *pl.* 205. The same point was determined in *R. v. Lowest.* 7. 3. 2 *Bott.* 148. *pl.* 198.

7. Of the time for which the contract is made.

It is observable, that the statute doth not say for what time he shall rent the tenement, but only of what value it shall be by the year. And in the case of *Gratwich v. Shen-* *E.* 32 *G.* 2. a person took an house of 30*s.* a-year, in the parish of *Gratwich*; and 2½ acres of land in the parish of *St. Bromley*, for the growing of potatoes, from *Candlemas* to *Michaelmas*, being eight months, for 11*l.*; and lodged there the last 40 days before *Michaelmas* in the parish of *King's Bromley*. It appeared that he took them *bonâ fide*, and without any design of fraudulently obtaining a settlement in the parish; and it was adjudged that he gained a settlement in the parish of *Gratwich*.

ment as under 10l. a-year, by the finding of the justices, who have stated it as a fact, that at the time when he took it, it was of the value of 10l. a-year to be let. And it was adjudged that he thereby gained a settlement. *B.S.C.* 574. 2 *Bott.* 135. *pl.* 187.

R. v. Fillongley. *M.* 29 *G.* 3. Removal from *Fillongley* to *Kinwalsley*; and quashed by the sessions. The pauper on 1st *January* 1786, and for some years before, rented and resided on a tenement in the parish of *Fillongley*, of the yearly value of 10l. He continued thereon till the 29th *April*, in the same year, when he was removed by an order of removal from *F.* to *Kinwalsley*; on the same on which he was delivered with the said order of removal, he returned back to the tenement in *F.*, where he resided without making any new contract with his landlord for the same, and without any interruption for about three quarters of a year, and then was removed to *Kinwalsley*. An appeal was entered against the said order of 29th *April* 1786, but was not prosecuted. The question was, Whether as the pauper entered into no new contract on his return, he could be considered as, "coming to settle on a tenement of 10l. per ann. within the statute? and, whether the former contract were done away by the order of removal?" And it was urged against the order of sessions, that by the case of *R. v. St. Michael's Bath*, (*Cald.* 110.) there must be a privity of contract, and that mere possession will not suffice. That the pauper's return was a wrongful act, and that therefore by the case of *R. v. Kenilworth*, (2 *T. R.* 598,) no settlement could be gained. But it was held clearly by the court, that an order of removal could not put an end to a contract between the parties, respecting the taking a tenement; that therefore the pauper could not be considered as returning in a state of vagrancy, and that the old contract remained, and therefore he gained a settlement by a residence of 40 days. That in the case in *Cald.* the pauper resided against the consent of the landlord. Order of sessions discharged. 2 *T. R.* 709. 2 *Bott.* 693. *pl.* 808.

Removal under an order will not put an end to a contract for renting, and a pauper returning after execution of an order of removal, to his tenement under such contract, may gain a settlement thereby.

8. Of fraud.

Fraud will defeat this species of settlement, as it will all others.

R. v. Woodland. *E.* 26 *G.* 3. It appeared by the case stated, that the pauper being settled in *Woodland* went to *Albburton*, where he rented a cot-house at 11. 12s. per annum, in which he resided; during which time he took a meadow in *Woodland*, at the rent of 10 guineas, of one *M. N.*, who resided in the same parish. The pauper did not stock it at

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but at *Christmas* he let the *grafs* for 3l. 3s. to *Edward*, till *Lady-day* following, who stocked it and paid the to him. Several persons offered to take the *grafs* of pauper before he let it to *Barter*. He (the pauper) up the ground for mowing, and then let the mow to said *M. N.* for five guineas, and the after *grafs* for guineas. At the end of the year, when the pauper ed accounts with *N.*, he received two guineas on balance counts, after allowing five guineas to *N.* for the half's rent then due; *N.* had frequently made a practice to ground and let it again in parcels, (it was the case now); e years before this transaction, the pauper had received f from *Woodland*, and half a year after the expiration ie term, his wife received relief from *Woodland*. The ons were of opinion, that the said taking was not frau- nt. And the main question made in argument was, ether the court of K. B. would bind themselves by the ing of the sessions, that it was a fraudulent transaction? in support of the negative were cited *R. v. St. Nicholas wick. B.S.C. 171.* And *contra, R. v. Tedford. B.S.C. 2 Bott. 505. pl. 560.*

ut the court said they were of opinion that it was a dulent taking, and that they would give no opinion upon right of the court to examine into the propriety of such dusion by the sessions. 1 *T. R. 261.* 2 *Bott. 139.*

liable to be removed to such parish or place where he was last legally settled before the said purchase and inhabitancy therein.

1. Therefore, as to the having an estate of his own.
2. As to estates acquired by purchase.
3. That a person may not be removed from his own, although not settled thereby.
4. Of certificate persons, as affected by this act.
5. Of residence.

1. As to the having an estate of his own; and herein :
 - (a.) Of the value requisite.
 - (b.) Of infants, executors, administrators, next of kin, tenants at will, and tenants by quarantine.
 - (c.) Of joint-tenants, trusts, estates vested in the husband by marriage, guardian in socage, &c.
 - (d.) Of estates gained wrongfully.
 - (e.) Of profits not partaking of the realty.
 - (f.) Of mortgages.

1. (a.) Of the value of the estate.

E. 11 An. Harrow v. Edgeware. A person settled at Harrow, went into the parish of Edgeware, and purchased a copyhold estate for life, and lived therein four or five years, and died. And as this was a tenement under 10l. a-year, the question was upon the 13 & 14 C. 2. Whether this gained him a settlement at Edgeware? It was argued that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, though not worth 10l. a-year.—And by *Parker Ch. J.* and the court: Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, though less than 10l. a-year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement. *Foley, 257. 2 Bott. 457 pl. 520.*

The estate need not be of 10l. per ann., if it be for life, or of inheritance, and it may be copyhold.

See *West Shefford v. Bayden*, post, this title, 5.

- (b.) Of infants, executors, administrators, next of kin, tenants at will, and quarantine.

E. 13 G. 2. Hasfield v. Tirley. On a special order of sessions, relating to the settlement of a boy of eight years and a girl of six, it was stated that the mother of these children had an estate of 4l. a-year in Tirley, where she and her husband lived and had these children: That she dying, the husband became tenant by the curtesy; and whilst such, he took

An infant eight years of age residing in the parish in which it has an estate of its own, is irremovable, and may gain a settlement by such residence.

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301. a year at *Hasfield*, and lived one year there with his children, and then died: That the children being found by their grandmother at *Tirley*, were both removed to *Hasfield*; which order the sessions confirmed.—And now the court, upon argument, confirmed the orders as to the girl, and quashed them as to the boy. For as to the boy, he was not in fee of the 41 a-year. And though it was not stated, he was actually upon that spot, yet it was enough that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it is otherwise; she could demand no maintenance out of her brother's estate; it was never yet determined, that children should go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the parish where they are settled. *1131. B. S. C. 147. 2 Bott. 462. pl. 525.*

See post, R. v. Houghton le Spring.

7 G. 2. *Sundriss v. Haver. Thomas Perch*, by indenture, demised to *Thomas Gates* the father, a cottage at 5s. a year, which was the full value for 99 years. The lessee held it till his death, and devised it to *Thomas Gates* his son. The question was, Whether the son as executor, being settled to the term, shall gain a settlement by inhabiting in the cottage?—By the court; Where a man lives upon his estate, is a case of a very tender nature, and the law will not settle him: Persons to be removed under the statute of G. 2. shall not wander from place to place, and so the son shall

making the first order he had gained no settlement at *North*; because nothing vested in him before administration was granted to him. If so, then that order for him was a good order when made. And the court might not to have quashed it; though administration was afterwards taken out. For they could not quash an order upon a matter which happened *ex post facto*. If administration really gained him a settlement, there would have been a new order of two justices to remove him to *Widworthy*. But taking out administration at the term was expired, could never give him an interest at the expired term. And whilst the term subsisted, not taken out administration, he was in possession merely as tenant at will. He was removeable by the parish; and it would have been without foundation if administration had been granted to any one else. *Andr. 4. B. S. C. 109. 461. pl. 524.*

Tenant at will can gain no settlement as such.

22 G. 3. *North Currey v. Ruibton. Betty Winter* and her four children, were removed from *North* to *Ruibton*. The sessions quashed the order, and especially: That *John Winter*, late husband of the pauper as before marriage settled at *Ruibton*; that soon after marriage he purchased a cottage and garden in *North* of the yearly value of 20s. for 14 guineas, which he promised to him, his executors, administrators, and assigns, years, or three lives, at the yearly rent of 2s. That he and his wife resided in the said cottage for several years until his death: *Betty* his widow, and their said children, soon after were chargeable to *North Currey*, but were refused relief: they would go into the workhouse, which they did not obtain possession of the said cottage and garden, where they were relieved until they were removed to *Ruibton* in July 1781. *Ruibton* appealed at the *Easter* sessions 24th July 1781, which sessions was adjourned, and the said *Betty* returned to the said cottage, and resided there till April 1781, when she sold the said cottage and garden for 14 guineas for the residue of the term, and by indenture 28th April 1781 assigned the said term. That on July 1781, being the day after the 1st day of the present year, the said *Betty* sued out letters of administration of her husband's effects. — *Gould* in support of the order of the court, stated the question to be, Whether a person having a right to administration, could by a residence of 40 days gain a settlement before administration actually taken out, and he urged that they might: But being called upon by *Buller J.* to distinguish this case from the above case of the *R. v. Widworthy*, he endeavoured to shew that there was a difference between

Where a wife and two children survive the intestate, the wife cannot gain a settlement by letters of administration taken out after assignment by her of the intestate's term. Lease for lives.

IV.

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between

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been the sole next of kin, and where several persons in the same degree have an *equal right*; here, the widow having no administration a specific right in the thing, could not remove it; that there was only a ceremony necessary to effect the assignment by her indefeasible; that in the case of *Widworthy* the pauper was not *solely* entitled to administration, but jointly with his brother. — L. Mansfield said, that this case did not materially differ from the case of *Widworthy*; the children were entitled to two-thirds of the effects, the widow is not properly, and in the sense of the cases, the sole next of kin. Order of sessions quashed. *Cald.* 137. 2 *Bett.* pl. 543.

T. 4 G. 3. *Mursley v. Grandborough.* Sir John Fortescue leased a cottage of 20s. a-year to one *Eden* for 99 years, paying 12d. rent: *Eden* assigns the term to one *Gadden* in fee, for his wife for life, and then in trust for his son, during the remainder of the term: The wife dies. Afterwards the son dies, leaving a wife, who, as administratrix of her husband, becomes entitled to this term, and she grants the cottage for 24 years, excepting two rooms, (in which two rooms she lives,) and marries one *John Chappel*. The question was, Whether *Chappel*, as husband of an administratrix who was entitled to the trust of a term only, and as being entitled to a chattel in another's right only, was seised by the 13. & 14 C. 2. ? — And by the court, he was not; this is not a taking of a tenement under 10l., for the

and until the date of the order of removal, resided with her family in *Horsley*. On the 11th of *January* 1806, the pauper obtained letters of administration to her father *W. P.*, and on the 29th of the same month, she sold and assigned her interest to *W. D.* who ever after continued in possession. In support of the order of sessions it was contended, first, that the pauper as *sole* next of kin of her intestate father (after the death of her mother-in-law) had such an equitable interest in the leasehold property, that by residing 40 days in the same parish she gained a settlement. And for this they cited *R. v. Gold Aston*, and *R. v. Offchurch*, as to the distinction to be taken between the case of a *sole* next of kin, and those where others were entitled in an equal degree. And they said that the cases which had been determined against the settlement of the next of kin, were either where more than one were beneficially entitled under the statute of distributions, although one only were entitled to take out administration; or where administration was not taken out at all; or at least not taken out till after the interest in the premises expired in respect of which the settlement would accrue. And they cited *R. v. Widworthy*, *South Sydenham v. Lamerton*, *R. v. Lower Swell*, *R. v. North Currey*, and *R. v. Chew Magna*. And secondly it was argued, that the letters of administration, which were in fact taken out 18 days before the removal, and while the pauper's interest in the premises still subsisted, (which differed the case from *R. v. Widworthy*,) had relation back to the death of the intestate, so as to vest in her the legal property of the term from that time. And that here the pauper had, therefore, both an actual possession, and, by relation, a legal title, if that were necessary, for more than 40 days, during which she resided in the same parish. It was answered at the bar, that the administration could not have the effect of making the next of kin irremovable for a time past, when it must be admitted that she was removable, unless by reason of any equitable interest which as *sole* next of kin, she might have in the premises. To this the court immediately assented. Afterwards Lord *Ellenborough* Ch. J. delivered judgment. This is the case of a *sole* next of kin exclusively entitled, after the death of her mother-in-law, to administration of the personal estate of the intestate, her father; and the question is, Whether the pauper having after she became such *sole* next of kin to the intestate, resided more than 40 days in the parish, in which a leasehold tenement of 40s. *per annum*, belonging to the intestate lay, thereby gained a settlement in that parish. The grant of letters of administration cannot operate for the purpose of rendering her not removable, at

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the past, when as far as the letters of administration are concerned, she was removeable for want of them; and in any order which might have happened to be made for removal, (as no letters of administration then existed,) and not, as was held in *R. v. Widworthy*, be quashed afterwards upon the subsequent grant of them. Can then a person, for this purpose, become the owner of a chattel real, which had belonged to the intestate, before the actual grant of administration to such person? — Upon the death of her father-in-law, the pauper became *sole* next of kin to the estate; it was in her power therefore, at any moment afterwards to have clothed herself exclusively with the legal character and rights of an administratrix. — Lord Mansfield, in *v. Cold Ashton*, observes that there is “a great difference between a *sole* next of kin, and where several persons in equal degree have all of them, (as in that case they had,) an equal right.” — In *R. v. North Curry*, Lord Mansfield again observed, that the widow (the pauper in that case) “was not properly and in the sense of the cases, the *sole* next of kin.” The effect however of a forty days’ silence by a sole next of kin has never yet received a judicial decision. *South Sydenham v. Lamerton*, was argued and decided on another ground. Adverting to the intimation given by other judges, of what would be their opinion upon a case as the present, if it should come before them,

assignment of dower, and then married a second husband, who resided in this house with her about two years, and then died. — By Lord *Mansfield* and the court, The mere *right* of dower gained a settlement to herself, she having by *Magna Charta* a right to remain 40 days in the house; and being irremovable for 40 days, she thereby gained a settlement. But she could not communicate it to her second husband; as a tenant in dower has no right to *enter* till dower is assigned. *B. S. C. 783. 2 Bott. 474. pl. 539.*

settlement by residing upon the estate; but the second husband gains none though he resides with her.

(c) *Of joint tenants, trusts, estates vested in the husband by marriage, guardian in socage, &c.*

Natland v. Stainton. E. 14 G. 3. Two justices removed *Thomas Gibson* and *Hannah* his wife, from *Natland* to *Stainton* in the county of *Westmorland*. The sessions upon appeal quashed the order, but directed the case to be drawn up for the opinion of the judge of assize, and agreed to be determined by his opinion. The case was, *Alan Court* by his will devised his estate at *Natland* to his wife during her widowhood, and after the determination thereof to trustees to sell, and divide the money equally among his children, of whom the said *Hannah* wife of the pauper was one. The testator died, the widow entered and let part of the estate to farm, reserving to herself a dwelling house which was worth about 20s. a-year. The pauper *Gibson*, being reduced in his circumstances, came with his wife to live with her mother, the widow, in part of the said dwelling house; the widow died in *June* 1769, the said pauper and his wife continuing in possession of that part of the dwelling house aforesaid. In about a month after the death of the widow, the trustees contracted for the sale of the estate, and in *February* following a conveyance was executed, the children of the said deviser being no parties thereto. The pauper paid no rent to the widow, but from her death he paid rent to the purchaser until *May-day* following, when he quitted the premises. Upon this it was insisted that as the pauper and his wife inhabited in *Natland*, in part of the house devised as aforesaid, from her mother's death in *June*, till the same was conveyed in *February* following; and she being entitled to a distributive share of the money to be raised by sale of the said devised premises, the pauper was not removeable during that time, and consequently gained a settlement in *Natland*. The opinion of the judge was given in writing in these words, "I have heard counsel on both sides, and am of opinion the settlement is in *Natland. H. Gould.*" Afterwards a rule was obtained in the

If an estate be devised to a wife during her widowhood, and then to be sold for the benefit of the children; and one of them marry, and then the testator die, and after the widow, and the married child continue to live therein, a settlement is gained.

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at of king's bench, to shew cause why the order of sessions aforesaid should not be quashed. But the counsel instead of shewing cause objected against the court's entering into the matter, for the judge having heard counsel given his opinion in writing, this ought to be final, otherwise no judge of assize will ever hereafter accept a reference of this kind. The court saw it in the same light. and Lord *Mansfield* observed, that here was a manifest consent of the parties to this reference to the judge, and therefore it was like all other references, by consent. He stated that as at present advised, he was of opinion with the judge. However after this consent, he thought it very proper to take the matter up again. *B. S. C. 793.*

2. v. Offchurch. H. 29 G. 3. *Henry West* and his wife were removed from *Thurlaston* to *Offchurch*, which was ordered at the sessions, subject to the opinion of the court in case reserved. *J. West* the father of the pauper was removed at *Offchurch*. In *January 1767* his wife who was the mother of the pauper died, and in *June 1767 J. West* married again with one *Jane Lockley*, with whom he lived at *Offchurch* until *1770*, when they both went to *Southam*, where they resided three years without doing any act to obtain a settlement there. In *1773* they removed to *Ladbroke* house there held under the following title, (the case then

Sydenham v. Lamerton or in any of the other cases. The question in that was, Whether the next of kin, without administration, had any estate whatever? and it was held that he had not. In *R. v. Cold Ashton* a doubt was made, whether a next of kin having the *sole right* of administration, could not gain a settlement without taking out letters of administration. That shews an *equitable* estate is sufficient to give a settlement. And indeed this position is confirmed by many other cases, and there are none in opposition to it. Then it is said that this is going still further, because this is only the equitable estate of the wife; and that even the wife herself had no right to reside upon it without the consent of the trustees. But she might beyond all doubt, if she had chosen, have elected to take the *estates* with her own hands, and that the trustees could not have prevented. The objection then against the husband's gaining a settlement here is too refined: for the wife had a right to reside on her property, and to communicate it to the husband. And although there is no case directly like the present, yet the principles of the decided cases go the length of determining this. The other judges assented, and both orders quashed. 3 T. R. 114. 2 Bott. 487. pl. 51.

R. v. Tarrant Launceston. H. 43 G. 3. Removal from *Tarrant Launceston* to *Tarrant Rawson*, and quashed by the sessions. J. C. the pauper was settled in T. R.: In June 1795, he made a purchase for less than 30l. of a leasehold tenement in T. L. for 99 years, determinable on three lives; in consideration of 10l. advanced to him by W. D. he afterwards bargained, sold and assigned the said estate with the lease, to W. D. to hold for the remainder of the term, in trust to let the premises, receive the rents, and thereout pay himself the said 10l. with interest, and costs and charges; and after such repayment, to receive and pay the clear rents and profits to the wife of the pauper during her life, to her sole and separate use, not subject to the debts or contracts of her husband, and her receipt alone to be a discharge of the said rent; and after her decease, in case the pauper survived her, in trust to pay the rents and profits to the pauper during his life;—there were other trusts after the death of the survivor. — After the execution of this deed W. D. suffered the pauper to continue residing upon the premises, which he did till he became chargeable, when he was removed. It was urged in support of the order of sessions, 1st, That though the pauper could not gain a settlement in his own right, in respect of the purchase being under 30l., yet after the conveyance to D. in trust to repay himself the

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advanced, and afterwards in trust for the pauper for life, remainder to himself for life. The pauper's estate in the premises by act of law, by virtue of the settlement might be acquired, either in his character as a tenant in possession, or by virtue of the equitable interest which he had in it. And they cited for this, *R. v. B. & C.* They urged that as the trustee did not eject the pauper, the parish officers could not legally procure him to quit the property, in which he as well as his wife had an equitable interest. Upon payment of the redemption money on it immediately in right of his wife. On the other side it was said, That this was no mortgage, and that the pauper was not entitled to any thing; but that the trustee had an immediate interest left in him. That the pauper had paid the whole term to D. as a security for the redemption money, that was never repaid. That he was no more than a tenant at sufferance. Neither was he entitled to the redemption money of his wife, supposing the redemption money to have been paid by her. The husband is by law bound to provide a sufficient maintenance for his wife, and the house being then to be held in trust for her separate use, the trustee would be liable in the event of a breach of trust to have given it up to the wife. If the husband in the character of a tenant paying for a house was on the footing of a mortgage: for the redemption money of the money lent. the premises were to be

should therefore be much inclined to ask with Lord Mansfield in *R. v. St. Michael's, Bath*, "What interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to pay off debts." — Upon the whole, this was such a doubtful contingent interest in the pauper, that without clashing with any of the adjudged cases, I am authorized to say that no settlement was gained by the pauper's residence on this property. — The other judges agreed, and the order of sessions was quashed. 3 *E. R.* 226. 2 *Bott.* 499. *pl.* 556.

R. v. I. of Oakley. H. 49 G. 3. Removal of *John King* and *Mary* his wife from *Brill* to *Oakley*, both in the county of *Bucks.* *Thomas Hawes* about 38 years ago inclosed a piece of waste land in the parish of *Brill*, and built a cottage thereon, which he occupied till his death. By indenture dated the 3d *November* 1795, he and his son *Thomas* demised the cottage to *James Hawes* for a term of 500 years, by way of mortgage, for securing 20*l.* and interest, which yet remains unsatisfied. *Thomas* the son afterwards married the pauper *Mary*, and resided in the cottage with his father until *June* 1801, when *Thomas* the father died intestate, leaving his son his heir at law, who continued to reside on the estate till *November* in the same year when he died intestate, leaving the pauper *Mary* his widow and four infant daughters, three of whom at the time of the removal were under 14 years of age. The widow continued with her daughters to reside on the said estate for more than 40 days (as it was afterwards agreed) after the death of her husband, before her eldest daughter attained the age of 14, and in *October* 1806, the widow intermarried with the pauper *John King*, whose legal settlement was in the parish of *Oakley*, and who together with his said wife and her children, resided on the said estate from the time of the said marriage, to the time of the removal. The estate at the time of the removal was of a less annual value than 10*l.* It was admitted by the counsel for the appellants, that *Mary King* had gained no settlement by any right of dower, in the said estate. The questions intended to be submitted to the court were, first, Whether *John* and *Mary King* or either of them gained a settlement by their respective residence on the estate, as above stated? secondly, Whether *Mary King* communicated any settlement gained by her residence, before her marriage to her husband *John King*? thirdly, Whether both or either of them were irremovable, at the time of the order of removal. — Lord *Ellenborough* Ch. J. There is no doubt in this case, but that the mother who was guardian in socage to her daughters,

A guardian in socage residing on the ward's estate for 40 days, gains a settlement in the parish, and cannot be removed from the possession of it at any time.

not the mere owner of
estate. It is laid down
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irremoveable from it as
afterwards to the ward
case though new in character.
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occupy the estate, and
from it to their prejudice
or of a sole next of kin,
who has a right to reside
residence for 40 days
with D. R. C.

leasehold property, and is only accountable for the profits.

Order of sessions quashed (a). 10 E. R. 491.

Ilmington v. Mickelton. T. 6 G. 3. *Eliz. Stanley* purchased a leasehold tenement in the parish of *M.* for the sum of 6 l. for the remainder of a term of 1000 years. She resided upon the same about nine years, and then was married to *T. E.* who resided with her upon the same tenement about 16 years; then he died; and after his decease she continued upon the premises for several years, and at last sold the same for the sum of 6 l.; and after such sale was removed by order of two justices to *Ilmington*, the place of her husband's settlement before their intermarriage. And the sessions upon appeal confirmed that order. It was moved to quash these orders. On shewing cause, it was urged in support of the orders, that this was a purchase by the wife, clearly within the words of the statute, under the value of 30 l. and the husband had no claim to it but by virtue of that purchase. The term survived to the wife on her husband's death. And if he had survived her, he could not have had it without taking out administration to his wife. On the contrary, it was answered, that this though a new case, yet was within the reason of former cases. In cases of descent, a settlement is gained, though the original purchase be under 30 l. value. And there is as much reason why a settlement should be gained in the present case. This woman had an estate vested in her when *Evans* married her; which upon the marriage vested in him. The husband gained a settlement in *Mickleton* by 40 days residence upon his own estate; and his settlement communicated itself to the wife. And of this opinion was the court. And both the orders were quashed. B. S. C. 566. Bl. Rep. 598. 2 Bott. 471. pl. 534.

A woman before marriage purchases under 30 l. her husband after marriage resides on the premises, he thereby gains a settlement, and the settlement so gained will be communicated to her.

E. 14 G. 3. *Everbolt v. Woburn.* The paupers (two sisters) resided at *E.* under a certificate from *Woburn.* A person entitled to a long term of years in a cottage in *Everbolt*, after having devised it to *Andrew Powell*, son of their father *William Powell*, adds, "it is also my will and pleasure, that the said *William Powell* (their father) and his wife and children shall have free liberty and power during their natural life to dwell in it." And accordingly, *W. P.* and his wife, and their said son *A. P.* and the two daughters (the paupers) resided in it till *W. P.*'s death.

A leasehold cottage is devised to A. P. with liberty to the paupers to dwell therein during their lives; by residence under the will they gain a settlement.

(a) Vide *Osborn v. Carden.* Plow. 293. Where the court consider that the whole estate and interest of the lands is in the guardian in socage (which must be understood during the guardianship) to the use of the infant. And in *Bedell v. Constable.* Vaugh. 182—183. he is said to have an interest and not merely a naked authority, though it be an interest joined with a trust for his ward.

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without the
lord's consent.
For a justice of
peace cannot
determine a
man's title.

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that the cottager had a good title in ejectment, and in any case but in a real action. — L. C. J. *Raymond* said, he had known recoveries upon a 20 years quiet possession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *prima facie* it is an inheritance in the daughter; and an estate by disseisin is in law a good estate, and a fee simple, till it be defeated. Wherefore all the court held, that the justices had no jurisdiction in this case; for they could not examine into the title to the land. And the settlement in the parish of *Wyley* was adjudged to be good. 2 *Seff. C.* 115. 2 *Str.* 608. 2 *Bott.* 461. *pl.* 524.

M. 9 G. 3. Bitton v. St. Philip and Jacob. The pauper, *George Battman*, built a cottage upon the waste, without leave of the lady of the manor; was not rated, nor paid any taxes; but continued nineteen years and a half in possession. About 20 years ago, the pauper *Battman* was turned out of possession of the said cottage, by an ejectment brought by a person claiming the same under a mortgage thereof made by the said *Battman* for the sum of 15*l.* And some time after that (which was more than 20 years ago) the said *Battman* and the mortgagee sold the said cottage to one *Williams* for 28*l.*; and the said *Battman* had 5*l.* part of the purchase money. — The court were all of opinion, that it appeared to be a possession of more than 20 years. He was himself in possession nineteen years and a half: and the mortgagee's possession must be also considered as his possession. And it was adjudged a good settlement. *B. S. C.* 631. 2 *Bott.* 472. *pl.* 536.

Living in a cottage built without the consent of the lord of the manor gains a settlement.

(e.) *Of profits partaking of the realty.*

H. 14 G. 3. Stockley Fomroy v. Cheriton Fitzpayne. The grandmother of *John Whitten* the pauper, being possessed of an estate in the parish of *Cheriton Fitzpayne* for a term of years determinable on the death of *Sarah Whitten*, mother of the said pauper, devised to him 10*l.* a-year out of her estate during his said mother's life. The testatrix died, leaving at her decease the said leasehold estate, and effects to the amount of about 32*l.* The pauper, being considerably in debt, in order to avoid his creditors, went to reside in the said parish of *Cheriton Fitzpayne*, and there resided with his mother on the said leasehold estate, and carried on the business of a jobber of cattle, during the continuance of the annuity, and

Living upon a leasehold estate out of which and other personal property this person has a rent charge only, gains no settlement.

Poor. (Settlement.) [Sect. XIII. (1.f.)]

the same was due and payable, for the space of 40 days upwards. — By *L. Mansfield*: There is no colour for adding the pauper to have gained a settlement in *Cheriton payne*. He did not go thither to reside upon his own: he fled there to avoid his creditors: This was no specific legacy, it is payable out of the whole personal estate. If it were a specific legacy, a specific legatee has no right to go and live upon the estate. If it had been a rent charge out of a freehold, it would not give a right to live upon such freehold. But this man had only a pecuniary interest: There was no colour for his going to live upon this freehold estate as his own. *B. S. C. 762. 2 Bott. 473. 38.*

Ex v. Melbourne E. 18 G. 2. The pauper's husband, during his residence at *Melbourne* officiated as schoolmaster. During his continuance in the school certain lands were by deed indented and inrolled, conveyed in trust to certain persons being vicars of certain parishes, and succeeding vicars, to take the profits thereof to employ same for certain purposes; one of which was as follows: "Also the yearly sum of 10*l.* to the charity school of *Melbourne* in the county of *Derby*, to be paid to the vicar there the time being." And this sum was yearly received by the pauper's husband from the vicar of *Melbourne*. And it was held that this annuity of 10*l. per annum* did not appear to be appropriated to the schoolmaster, and that he had no

premises was 650l. and the debts 880l. It was argued, that the beneficial interest in the estate remained in the pauper till sold; and for this was cited the case of *Natland*: And residing upon it as his own, he was not removeable from it, and consequently gained a settlement. And it was likened to the case of a mortgage.—By *L. Mansfield* (unto which the rest of the court assented): If the estate on which a pauper resides is substantially his property, this is sufficient whatever form of conveyance there may be; and therefore the *mortgagor in possession gains a settlement*, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, What interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was so doubtful whether there would be any surplus, that the deed says, he shall have the surplus, *if any*. He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession, till the mortgagee brings an ejectment. After the mortgagee has got into possession, he (the mortgagee) might gain a settlement. There is still another and a stronger ground, in this case; for the possession was gained by fraud. *Doug. 608. Cald. Cas. 110. 2 Bott. 475. pl. 541.*

So also a mortgagee in possession.

Note. In a subsequent case of *R. v. Edington (post.)* this case was much cited, and the court said that the main point upon which the decision in this case was made, was the fact of fraudulent possession.

F. 30 G. 3. R. v. Catherington. *William Booker* and his wife and family were removed from *Compton* to *Catherington*. The sessions confirmed the order, subject to the opinion of the court, on a case stating, That the pauper had a settlement in *Catherington* prior to *Michaelmas 1789*, and was entitled to the equity of redemption of a freehold estate in *Compton*, consisting of several dwelling-houses of the annual value of 13l. 5s. which had been mortgaged by his father to *Eliz. Morey*, which mortgage was afterwards assigned to one *Ayles*. In *Michaelmas term 1788*, *Ayles* delivered declarations in ejectment to the pauper as landlord, and to the several tenants in possession of the estate in *Compton*, and thereupon the tenants attorned to *Ayles*. About *Michaelmas 1789*, the pauper asked permission of *Mr. Newland*, the agent for *Ayles*, to inhabit one of the houses, part of the mortgaged estate, and which was then untenanted, *for the purpose of overlooking some repairs*, which he proposed to do upon the estate, with an intent to sell the same, and pay the mortgage money; in

Mortgagor living on the premises mortgaged, but not in possession as owner, gains no settlement.

Poor. (*Settlement.*) [Sec. XIII. (1. f.)]

sequence of which he inhabited one of the houses upwards of three months, when he was removed by the present owner. He did nothing towards the repair of the houses, or of the estate. No agreement was made between him

Mr. *Newland* with respect to any rent to be paid for the house. — *L. Kenyon C. J.* It has been long established that an equitable title is sufficient to give a settlement; but in the case alluded to, the mortgagor was in possession. So, the act for regulating votes of county elections, either mortgagor or mortgagee in possession may vote. But in case the party had neither *jus in re*, or *ad rem*. — *Buller J.* In the case of *St. Michael's, Bath*, it was said, that either a mortgagor or mortgagee might gain settlement according to circumstances; one of these circumstances is *possession*; and in possession all the questions have turned. Both orders affirmed. 3 *T. R.* 771. 2 *Bott.* 489. *pl.* 550.

2. v. Edington. *H.* 41 *G.* 3. Removal from *Edington* to *Winton*, and quashed by the sessions. *M. M.* in possession of a cottage in *Edington*, granted to one *C. W.* for 99 years terminable on three lives, purchased a reversionary interest in the same for a further term of 99 years, to commence at the termination of the first term, but determinable with the lives of herself and her brother *H. M.* Having married one *W. D.* the premises were assigned by deed, to which she and *W. D.* were parties on one side, and *J. P.* of *E.* on the other, to hold *&c.* as trustee for the parishioners of *E.* for the

the trustee. But this conveyance is equivalent to a mortgage and no more. Here is an express clause for a conveyance. Then this must be governed by the same rules as a mortgage. — *Grose J.* I cannot distinguish this from the case of a mortgage. The purpose of the conveyance was to secure the money; the parties interested continued afterwards in possession; the pauper paid the quit-rents, and repaired the premises. Now what more could a mortgagor in possession do? — *Lawrence J.* said, It cannot be disputed that a conveyance to a trustee in trust by sale, or mortgage, and receipt of the rents and profits to raise 10l. is merely a security for that sum, and it is plain that the parties themselves so considered it, by providing for a re-assignment of all, or so much as should not be sold, applied or otherwise disposed of. In case of *R. v. St. Michael's, Bath*, *L. Mansfield* begins by saying that which is decisive as applied to this; “If the estate on which a pauper resides is *substantially* his property, that is sufficient, *whatever forms of conveyance there may be.*” And therefore, he says, that a mortgagor in possession gains a settlement, “because the mortgagee, notwithstanding the form has but a chattel, and the mortgage is “only a security.” If then, the object be merely to secure money, whether the conveyance be in the form of a trust like the present, or of a mortgage, it is in substance the same thing. *Le Blanc J.* agreed. 1 *E. R.* 288. 2 *Bott.* 496. pl. 555.

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2. *As to estates by purchase; and herein,*
 (a.) *Of the consideration paid; and of mortgages.*
 (b.) *Of residence by a mortgagee.*
 (c.) *Of money laid out on the premises.*
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(2. a.) *Of the consideration paid; and of mortgages.*

That a purchase under the value of 30l. shall not gain a settlement.

Purchase under
30l.

By the 9 G. c. 7. *After March 25, 1723, no person shall be deemed to acquire any settlement in any parish or place, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30l. bona fide paid, for any longer or further time than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place where he was last legally settled before the said purchase and inhabitancy therein.*

Door. (Settlement.) [SECT. XIII. (2. a.)]

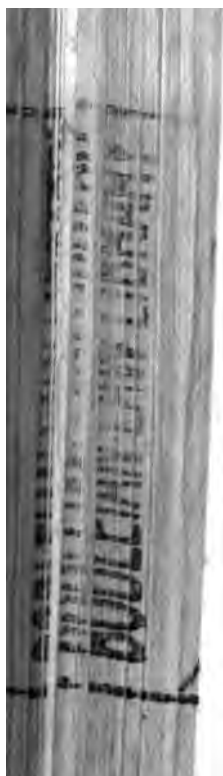
to person] And as this shall not settle the person purchased for longer time than he continues in the purchased estate, it shall not settle any of his children, by any derivative settlement from him. As in the case of *Salford v. Overton*, H. 4 G. 3. *Peter White* the younger and *Mary* his wife were removed from *Salford* to *Over-Norton*, as likely to become chargeable to *Salford*, and as being last legally settled in *Over-Norton*. On appeal, the sessions discharge the order, and state specially, That *Peter White* the father, being settled in *Over-Norton*, in the year 1726, for the consideration of 29l., purchased a tenement in the parish of *Salford*. His son the pauper was born there in the year 1730, and lived with his father therein till about 1754, when he married and left his father's family, and lived in a separate tenement at *Salford*, without having gained any settlement, but what he derived from his father. — L. Mansfield delivered the resolution of the court: The question is, whether the pauper ought to have remained in the parish of *Salford*, or have been removed from thence to the hamlet of *Over-Norton* as his last legal settlement? And we are of opinion, that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting in the purchased premises. And this would have been equally the case, if the act had never been made: For he could not have been removed from his own estate, though he had no settlement in the parish where it lay. So that

his father being seised in fee of a copyhold cottage in *Aldbury*, which used to be let at 25 s. a-year, did, about a year and a half before the removal, surrender the said copyhold cottage to his said son *Edward Shepherd* and his heirs, who were thereupon admitted and lived upon the same about a year and a half, and then sold the same for 14l. 2s. 6d. being the full value thereof. The two justices, and also the sessions, were of opinion, that this gained no settlement, being not such a purchase as the act intended for 30l. *bona fide* paid. It was moved to quash the order of the justices; for that this estate in *Aldbury* was the pauper's own by a surrender from his father, and there was no difference between a surrender from a father and a descent. But the court denied the motion, without so much as making a rule to shew cause. For they not only thought that the surrender looked fraudulent, but they said that the intent of the statute was, to prevent persons gaining settlements who were any ways likely to be chargeable, and therefore provided that they should be able to lay out 30l. in a purchase. And both the orders were confirmed. 2 *Seff. C.* 161. 1 *Barnadist.* 297. *B. S. C.* 56. 2 *Bott.* 489. (*n*).

30l. value to his son, the son gains no settlement by residing thereon.

But in *Marwood v. Kentisbury*, *H.* 29 G. 2. On a motion to quash an order of two justices, and an order of sessions confirming the same, for the removal of *Thomas Conibear* and *Mary* his wife from *Kentisbury* to *Marwood*. The case was: The said *Mary* had conveyed to her by her father, in consideration of natural love and affection, a cottage, garden and plat of ground at *Kentisbury*, for the residue of a term of 99 years then determinable on the death of one *Joan Scombe*, the consideration of which purchase originally, in the year 1689, amounted only to 20s. *Mary* and her husband entered upon the premises, and continued thereon for several years, until the lease determined by the death of the said *Joan*. Upon which they were removed from *Kentisbury* to *Marwood*. *Ryder. Ch. J.* If I had any doubt I would not give an opinion now. This is not a purchase within the meaning of the act. The word purchase is not to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. Otherwise, no devise, or gift, or settlement on marriage, would gain a settlement, unless there were a pecuniary consideration paid. The intention of the act was, to prevent settlements by purchases for small money considerations. In the present case the husband is not to be considered as a purchaser, and therefore he acquired a settlement in *Kentisbury*. And by the court unanimously, the orders of the justices were quashed. *B. S. C.* 386. 2 *Bott.* 464. *pl.* 527.

A conveyance from a father to his daughter in consideration of natural love and affection, without any pecuniary consideration being paid, is sufficient to gain her husband a settlement.



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E. 26 G. 3. Havant v. Warblington. Removal from *Havant* to *Warblington*. The sessions confirmed the order, and stated the following case: That *William Bridger*, father of the pauper, came to *Havant* with a certificate from *Warblington*: That *John Moody* esq. lord of the manor of *Havant*, by copy of court-roll, granted to the said *William* and his heirs, one parcel of waste ground called the *Gravel Pit*, and which did not appear ever to have been granted before. *William* built a house thereon, and lived therein for several years as owner thereof; he afterwards borrowed 100*l.* of *Mary Roper*, and surrendered the premises for securing the same; and on the money not being paid, she was admitted. She afterwards sold her interest to *John Hammond*, who was thereupon admitted. After the death of *William Bridger*, his heir at law sold his equity of redemption to said *Hammond* for 20*l.* 17*s.* and surrendered the same accordingly. It appeared by the court books that *William Bridger* was admitted, on the lord's grant, to one parcel of land called the *Gravel-land*, and in the copy of his admission were these words, "*fine one shilling, heriot one shilling, quit-rent one shilling.*" That *Moody's* steward proved that he was used to grant small parcels of the wastes of the said manor for small pecuniary considerations, but he never knew him make such grants without. That the value of the said parcel of land at the time of the said grant did not exceed 30*s.* or 40*s.* and *William Bridger* was at that time a very poor man. It did not appear whether any pecuniary consideration was given for the said grant, or it was voluntary and without any consideration.—The court seemed to reserve their opinion, whether supposing this to have been a voluntary grant, it would have discharged the certificate, so as that the pauper would have gained a settlement. But they were of opinion, that it was incumbent on the appellants to have satisfied the sessions that this was a voluntary grant; and they, not having done so, cannot now impeach the order; for as it does not appear upon the face of it to be wrong, the court must take it for granted that it is right. And they were of opinion, that there appeared sufficient in this case to shew that this was a purchase. Both orders affirmed (a). 1 T. R. 241. 2 Bott. 483. pl. 546.

R. v. Martley. E. 44 G. 3. Removal from *Doddenham* to *Martley*, and confirmed by the sessions. On the 25th of Nov. 1754, the dean and chapter of *Worcester* granted to *H. B.* the grandfather of the pauper, to him, his heirs and assigns, a lease of a cottage and garden, for his own life, that of his son *Thomas*, and that of his daughter *Susanna*, at

A grant of waste land by a lord of a manor under 30*l.* value will not gain a settlement.

A person resident on an estate granted him for lives in consideration of 2*l.* 2*s.* fine and 1*s.* rent, cannot be removed therefrom though actually chargeable.

(a) *L. Mansfield* was absent.

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Warden v. Kempston.
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Foley, 238. 2 Bott. 20

Atkinson by *Gill's* order. About a month after the execution of the conveyance, *Gill* mortgaged the premises to the said *Isaac Bristol*. *Gill* continued in possession about four years after the mortgage. Then *Bristol* entered, by virtue of the said mortgage and release of the equity of redemption. Then the inhabitants of *Waddingham* procured *Gill*, being out of possession, to be removed to *Tedford*. The order of sessions recites, that whereas the judges of assize had not time to hear and determine it, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this court doth declare and adjudge, that the purchase made by *Gill* was fraudulent, and that the settlement of *Francis Gill* is at *Tedford*; but that the parishioners of *Tedford* are no ways concerned in the said fraud.—It was moved to quash these orders; and urged, that the justices in their adjudication depart from their premises. For the act doth not extend to any case where the consideration exceeds 30 l. But here the consideration is above 30 l. And it appears to have been *bona fide* paid by *Gill*; part by himself, and part by his order (though by the hands of *Bristol*.) It doth not even appear that *Bristol* had lent it to him: therefore it shall be taken that it was *Gill's* own money. And no circumstances of fraud are stated: And therefore if this conclusion of the justices at sessions be drawn from the premises stated, it is a conclusion contrary both to the law and to the fact; and the court will themselves judge of it and set it right.—On the other side it was argued, Whether the sum paid as consideration money was greater or less; if there be fraud, it poisons the whole. The justices are the proper judges of fraud; and they have adjudged that it was a fraudulent purchase. And it appears upon the face of the case, as stated for the judge of assize, that it was so. But that is not all: They are not confined to this state of the facts. For they heard further evidence on both sides, before they adjudged the purchase to be fraudulent.—By *L. Hardwicke* C. J. It must be further evidence of the same fact. For the state of the case made for the judge of assize was before agreed between the parties to be the true state of it. This case doth not appear to be within the act; for the act is confined to purchases under 30 l. Now in the present case, the consideration was 39 l. and was *bona fide* paid to the vendor. And it would be pretty hard to say, that the justices had a power upon this act to inquire, Whether or no the purchaser borrowed the money? It is a common case to borrow money to make up the price. And as to the fraud, it is true that the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special

verdict. The justices are judges of the fact; and they may judge of the fraud arising from the fact. If they had generally found the fraud, we might have been bound by such general finding: But when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. And the whole court was of opinion, that from the facts stated, there was no sufficient evidence of fraud. And both the orders were quashed. *B.S.C.* 57. 2 *Bott.* 505. *pl.* 560.

Purchase of a cottage for 60*l.* which was then mortgaged for 50*l.* gains a settlement.

T. 36 *G.* 3. *R. v. Chailey.* *W. Shaw* and his wife and children were removed from *Chailey* to *Newick* in *Suffex.* The sessions quashed the order, and stated the following case: In *November* 1786, *Shaw* being settled at *Newick*, purchased a copyhold messuage in *Chailey*, of *R. Hall*, by whom it had been before mortgaged to *R. Coppard* to secure the sum of 50*l.* and to pay for *Hall's* interest therein the sum of 10*l.* which the pauper paid to *Hall*, who on the 4th *November* 1786, surrendered the premises to the pauper, subject to the conditional surrender before made by *Hall* to *Coppard* for securing 50*l.* in *May* 1790, the pauper agreed with *J. Heath* to borrow of him 50*l.* on security of the said estate, in order to pay off the mortgage to *Coppard*; and on the 8th *May* the conditional surrender to *Coppard* was duly discharged in the court rolls by a warrant under the hand of *Coppard*, acknowledging having received the 50*l.* and all interest due thereon. On the same day the pauper made a conditional surrender of the premises to *Heath*, for securing the re-payment of 50*l.* which *Heath* had advanced to discharge the mortgage to *Coppard*. On the 4th *November* 1795, the pauper sold the said estate for 80*l.* being 30*l.* beyond the amount of the mortgage. The pauper resided in the cottage from the time of his purchase until the re-sale. — In support of the order of sessions, the above case of *R. v. Tedford* was relied on as in point. — On the other side it was contended, that nothing was purchased by the pauper but the interest in the land subject to the mortgage, for which the pauper paid 10*l.* and the (following) case of *R. v. Mattingley* was cited as in point. — By *L. Kenyon* C. J. I am not able to distinguish this case from that of *R. v. Tedford*. By 9 *G. c. 7.* no settlement can be gained by residing on a tenement that is purchased for less than 30*l.* but it was decided in that case, that though the party cannot pay the money out of his own fund, if he can borrow it on credit, that is sufficient to satisfy the words of the statute. It has been argued, that this was only an assignment of the original mortgage from the first to the second mortgagee, and that the mortgage interest never

was in the pauper; and to be sure if that interest never
 were in the pauper, it would be difficult to say that it con-
 ferred a settlement on him. Then it was said, that though
 the mortgage interest did pass through the pauper, it was
 merely the mode of transferring a copyhold interest from
 one person to another, and that this interest did not vest in
 the pauper; but the latter part of the proposition is not true;
 the estate did not pass immediately from the first to the
 second mortgagee; there was an interval, though a short one,
 in which the estate was vested in the pauper, and he conveyed
 it to the second mortgagee. An attempt however was made
 to distinguish this case from that of *R. v. Tedford*, by saying
 that there the legal estate was in the pauper for a longer
 period than in the present case, but that cannot furnish any
 real ground of distinction. If this had been a freehold estate,
 every judgment signed against the pauper, and properly dock-
 eted would have attached on this estate; although when I
 first read this case, I hesitated whether this could confer a
 settlement on the pauper, yet on consideration I think it is
 more safe to support the decision of *R. v. Tedford*, from
 which I think this cannot fairly be distinguished, and which
 has been adopted in subsequent cases, than to introduce nice
 and artificial distinctions. Therefore the order of sessions
 quashed, and the original order confirmed. 6 T. R. 755.
 2 Bott. 512. pl. 565.

T. 27 G. 3. Mattingley v. Heckfield. Removal from *Mat-*
tingley to Heckfield. The sessions quashed the order, subject
 to the opinion of the court on the following case: — On
 18th June 1769, the pauper came to *Mattingley* with a cer-
 tificate of that date from *Heckfield*, and continued to live at
Mattingley until the time of the removal: Whilst the pauper
 continued so to reside, and previous to the 3d of August
 1780, he contracted with *John Ironmonger* for the purchase
 of a copyhold tenement at *Mattingley*, which had been pre-
 vious to such contract, mortgaged to one *T. Bailey* for 32l.
 which money was unpaid at the time of making the con-
 tract; which contract was, that the pauper should pay
 39l. 17s. 6d. for the said tenement, which sum was inclusive
 of the 32l. due on the said mortgage, and the pauper paid
 to *Ironmonger* 7l. 17s. 6d. which, with 32l. 10s. to be paid to
Bailey, made the aforesaid sum of 39l. 17s. 6d. On the 3d
 August 1780, the pauper was admitted to the said premises
 on the surrender of *Ironmonger*, subject to a mortgage sur-
 render for the 32l. to *Bailey*, and the pauper afterwards
 entered into possession of the premises, and continued possessed
 thereof for four years, during which he paid to the said *Bailey*
 two years' interest, which was all the interest *Bailey* received
 after the purchase. He never paid off the said mortgage

Purchase for
 39l. 17s. 6d.
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poor. (*Settlement*;) [Sec. XIII]

ey: and in the year 1784, he delivered up the p
he said premises to the said *Bailey*.—The c
only question was, Whether the purchase mad
per was in fact of the value of 30*l.* *bond fide* pa
even pretended that the sum of 30*l.* has been pa
on the contrary, no more than 7*l.* 17*s.* 6*d.* for th
purchased the interest of the mortgagor subje
tgage. Now the estate was mortgaged for 32*l.*
mortgagor's interest subject to that was only 7*l.*
ch was the whole of the pauper's purchase. 'T
ing been mortgaged for 32*l.* the instant the mortg
possession, he might have gained a settlement up
the mortgagee was a purchaser for 32*l.* and th
purchased subject to that charge; had the
ney been *bond fide* paid, the court would not have
the purchaser came by the money, nor wh
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question of fraud for the consideration of the
in order to constitute a purchase within 9 G. 1.
30*l.* must not only be paid in point of fact, l
also *bond fide* paid.—Order of sessions
R. 12. 2 Bott. 508. pl. 563.

1. 30 G. 3. *R. v. Scammonden*. Removal fro
den to *Seyland* both in the West Riding of

attorney four guineas. The pauper resided above three months upon the premises, and afterwards sold them to his brother, *J. Bottomley*. To this conveyance *Harrison* and his wife were parties; and it recited *Harrison's* covenant to the former deed to levy a fine; but as such a fine had not then been levied, it was agreed that instead thereof, *Harrison* and his wife should acknowledge and levy a fine of the premises unto *Bottomley* in fee, which was in *H.* term 1787 levied accordingly; part of the expence thereof was discharged by the four guineas so left in the hands of the attorney by the pauper, and the other part was paid by *Bottomley*. And the sessions being of opinion that the four guineas was to be considered as part of the consideration under the act of parliament, and that *C. Bottomley* by such purchase gained a settlement in *Risborough*, discharged the order. — *L. Kenyon C. J.* said, it was clear that the party might prove other considerations than those expressed in the deed. It is permitted in all cases of covenants to stand seized to uses. And in *Filmer v. Gott*, where the considerations mentioned in the deed were 10,000*l.* and natural love and affection, the Lords Commissioners of the Great Seal directed an issue to try, whether natural love and affection formed any part of the consideration, the estates being worth near 30,000*l.* On an appeal to the House of Lords this was confirmed; and the jury on the trial of the issue finding that *natural love and affection constituted no part of the consideration*, the deed was afterwards set aside by the Lord Chancellor. — Order of sessions confirmed. 3 *T. R.* 474. 2 *Bott.* 510. *pl.* 564.

(b.) *Of residence by a mortgagee.*

H. 15 G. 2. Cottleigh v. Stockland. *John Spiller*, the pauper, was a mortgagee of a term for 15*l.*; and 30*s.* were due to him for interest, and 18*l.* 10*s.* more on bond and simple contract. The mortgagor died. *Spiller* took out administration, as principal creditor; entered and was possessed: and so continued, till removed by the original order. — By the court: *Spiller* gained a settlement, as a purchaser for a consideration of more than 30*l.* *bonâ fide* paid. *Str.* 1162. *B. S. C.* 169. 2 *Bott.* 505. *pl.* 561.

Mortgagee entering as principal creditor for above 30*l.*, and residing, gains a settlement thereby.

(c.) *Money laid out on the premises.*

H. 6 G. 3. Dunchurch v. South Kilworth. *Edward Tanner*, a certificate man from *Dunchurch*, together with his wife *Elizabeth*, were joint purchasers of a house, yard, and garden at *South Kilworth*, and paid for the purchase thereof 10*l.* and upwards. He laid out about 15*l.* more in repairs, and built a new shop on part of the premises; and was taxed

Laying out money afterwards upon a purchase under 30*l.* will not gain a settlement, even though the money be laid out in the erection of a shop.

after

Poor. (*Settlement.*) [Sec. XII]

the rate of a tenement of 30*l.* value, and reside till his death. After his death, his widow *Elizabeth* continued in possession for 10 months and afterwards sold part of the premises for upwards of 30*l.* value; but removing out of the other-house in the same parish, and becoming chargeable, she was removed by order of two justices which gave the certificate, and the sessions order. It was moved to quash these orders; a pauper on this state of the case had gained a *verdict* *Kilworth*.—By the court: The whole question is whether this woman was a *bonâ fide* purchaser of 30*l.* value? She cannot be presumed to have a descent, or executorship, or any such like advantage, because the contrary appears. She and her husband were joint purchasers. They took jointly and by entirety in equal moieties. If so, she can only stand in the same position as her husband did; which is that of a purchaser. If the value, the act takes it according to the purchase money actually paid; and no money afterwards laid out, or prior purchase of a greater value than it really cost at the time of making it. Therefore she gained no settlement by her purchase. And the orders were confirmed. *B. Rep.* 596. 2 *Bott.* 506. *pl.* 562.

If she had gone against her husband's consent, it would have made an alteration.—And the court were unanimous, that the justices could not remove her from her husband's property. *B. S. C.* 412. 2 *Bott.* 465. *pl.* 528.

E. 4 G. 3. Leeds v. Blackfordby. Joseph Howe, husband of Anne Howe the pauper, took a tenement of 10l. a-year at *Blackfordby*, and resided there above 40 days. Afterwards he took a tenement at *Leeds* of above 10l. a-year, and went and resided there for above 40 days, leaving his wife at *Blackfordby*. Then he returned to *Blackfordby*, and stayed with his wife there 27 days. And on his leaving her, and going away to *Leeds*, two justices remove her from *Blackfordby* to *Leeds*, as to her place of settlement. It was agreed, that her settlement must follow that of her husband: But the court were of opinion, that the justices had no power to remove her from *Blackfordby*, whilst her husband's interest there subsisted. The husband himself could not have been removed from his own tenement at *Blackfordby*, the lease whereof was unexpired. And if they could not have removed the man himself from his own, it follows that they could not remove his wife so long as it remained his. *B. S. C.* 524. 1 *Bl. Rep.* 466. 2 *Bott.* 468. *pl.* 531.

Nor from a leasehold tenement of the husband's.

E. 44 G. 3. R. v. Martley. In this case the point in discussion was, Whether a pauper residing on an estate, granted to him for three lives, in consideration of two guineas fine, and 1s. rent, could be removed from the parish where such dwelling was situated, though he were actually chargeable? It was determined that he could not; and the orders of sessions and of the justices were both quashed. It seems, however, that he cannot gain a settlement by 40 days residence as on his own estate under the stat. 9 *Geo. 1. c. 7*; the consideration being under 30l. 5 *E. R.* 40. 2 *Bott.* 501. *pl.* 557.

Not even if the pauper be actually chargeable.

4. How far a certificate person shall gain a settlement by an estate of his own, notwithstanding the above-said statute of the 9 & 10 W.

E. 5 G. Burclear v. Eastwoodhay. Abraham Hacket comes with a certificate into the parish of *Eastwoodhay*, and afterwards marries one Sarah Smith. Her father surrenders to her a copyhold estate of 20s. a-year, and so the husband had it in her right.—By the court: The man has gained a settlement in *Eastwoodhay*; for a man cannot be turned out of his own, be it never so small.—And by Fortescue J. The party here could not be removed: And not removable, and gaining a settlement, are the same thing. Then it was objected,

A certificate person may gain a settlement by residing on his own estate where it comes to him by act of law; as in right of his wife.

[*Note*;—when of settlements, thereby gains a respect to the pa it is by no means resides 40 days settled. A *servus* settlement unless mother for nurture any new settlement estate: So a *certi*, under the value of they are irremovable settlement.]

So, if he purchase; and his apprentice may derive a settlement from him.

H. 6 G. 1. *Living*, a purchase in *Stor* for above 40 days by the court: The for when a certificate diately ceaseth to and becomes a settlement with his

So, where the property purchased is leasehold, and descends to a certificated person.

E. 16 G. 2. *St* to a certificate per se by operation of law the statute hath been to be so in cases of statute of the 8 & 9 and hath been

Note. — The property here purchased was a leasehold estate.

T. 16 G. 2. *Deddington v. Duns Tew.* A certificate man purchased a house for 42l., lived in it many years, then sold it, and becoming chargeable was sent back. It was insisted that the 9 & 10 W. c. 11. saying, *a certificate man shall gain a settlement by no act whatsoever, unless the taking 10l. a-year, or serving an annual office*, this man, notwithstanding the purchase, might be sent back: and it was said to differ from the case of *Burclear v. Eastwoodhay*, where the surrender of a copyhold to the certificate man's wife was held to gain him a settlement; because there it was not his own act (as this purchase is) but it came to him by operation of the law.

—But the court did not think this a sufficient distinction, and said a purchase was in its nature an excepted case: and his selling it afterwards made no alteration. *Str.* 1193. *B. S. C.* 220. 2 *Bott.* 528. *pl.* 576.

H. 31 G. 2. *Cold Ashton v. Woodchester.* In July 1725, Daniel Harrison and Mary his wife, and William their son, went with a certificate from Woodchester to Cold Ashton. They all lived in the parish of Cold Ashton from July 1725, till about Christmas 1728, at which time William Fido the father of the said Mary died intestate, leaving the said Mary his daughter and five other children, and being at the time of his death possessed of and entitled to a tenement and two acres and an half of land, of the yearly value of 6l. 17s. in Cold Ashton, for the remainder of a term of 82 years, determinable on the death of himself and the said Mary his daughter. Upon the death of William Fido, Daniel Harrison and Mary his wife, and William their son, who was then about five years old, entered upon and took possession of the said tenement and land, and Daniel Harrison and Mary his wife have lived in and occupied the same ever since, till the removal by the order now appealed against. But no administration of the goods or personal effects of William Fido was ever granted to the said Daniel Harrison and Mary his wife, or either of them, or to any other person. William Harrison lived with his parents Daniel and Mary Harrison in the said tenement till about 1748, when he married the pauper Mary (by whom he had the four children removed); and after his marriage, he and his wife Mary lived in the parish of Cold Ashton separate and apart from the said Daniel Harrison, until the time of the death of the said William, which was in the year 1755. Mary the widow of William Harrison, and her four children, having, after the death of the said William, become actually chargeable to the parish of Cold Ashton, were removed by order of two justices to Woodchester which had granted the certificate. Upon appeal,

A settlement may be gained by a certificated person, who has had 20 years' possession.

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the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son;—the word *emancipation* is a loose term in our law, especially in the matter of settlements, and it is used in the books without affixing any precise idea. Indeed, it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are entitled to the settlement of their father, till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to say that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived 20 years with his father in this tenement, or at least very near it, and we cannot intend that he did not.—Mr. J. *Denison* was of the same opinion. (Mr. J. *Foster* absent.)—Mr. J. *Wilmot*: As to the father, I do not think it material to say any thing about the administration. Had the case turned upon that, it would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule (*stare decisis*), which is a right rule, and more especially in the poor law.—Possession by wrong gives a title upon an ejectment against the legal owner. Here is a legal title, without administration: After such a length of possession, one would be inclined to presume as much as possible. Now here it is possible that *Daniel Harrison* and his wife might have some grant or assignment from *William Fido* in his lifetime; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might possibly have been a rightful one.—It would be too nice to be computing days, to see whether the son was with his father a day over or under 20 years. And the order of sessions was affirmed. *B. S. C. 444. 2 Bott. 530. pl. 577.*

M. 32 G. 2. Shensone v. Aldridge. The wife of *Isaac Green*, a certificate man, had an estate devised to her for life by her father; upon which she and her husband entered, and lived thereupon for above six months.—By the court: *Isaac* hereby gained a settlement, notwithstanding the certificate. *B. S. C. 468. 2 Bott. 467. pl. 530.*

T. 21 G. 3. Hadenham v. Wivelingham. *Robert Bittany*, late husband of the pauper *Mary Bittany*, came with a certificate from *Hadenham* to *Wivelingham*, where one *Elizabeth Bittany* by her will devised her estate at *Wivelingham* to trustees to be sold, and the money arising from the sale thereof to be divided between the said *Robert Bittany* and three daughters of *William Bittany*. They all agreed among themselves, that *Robert* should have the real estate, and the three daughters

So, where an estate is devised to the wife of a certificate man.

Poor. (Settlement.) [Sec. 2]

William the personalty amongst them, where the trustees conveyed the said real estate to *Robert*; who resided thereupon several years. The question was, whether this residence of *Robert* was such a residence in property as would discharge the certificate, and entitle him to a settlement. It was admitted, that residence on a leasehold, in which a man has only an equitable interest is sufficient to entitle him to a settlement. It was insisted, that *Robert* had taken no interest in the lands by the will, neither legal nor equitable; and that he had no right to call upon the trustees to sell the lands, or to contribute the money arising from the sale. On the other side, it was argued, that *Robert* had clearly an equitable interest in the lands under the will; all the parties had agreed that the lands should not sell, and that it was clearly settled, that the lands were to be sold, and that the proceeds were to be applied to the payment of one's own estate, coming either by descent or by purchase. It was further argued, that whether the legal interest be coupled with the equitable interest, or not, the person who has the legal interest, and whatever the value is, will gain a settlement, and be entitled to charge a certificate. — *L. Mansfield* mentioned the case of *per v. Radclyffe*, to shew, that a devisee of real estate, who has a right to sell from the sale of lands after payment of debts, has an equitable interest in the lands thereby sold, and is entitled to charge a certificate. — *Willes J.* said, the same question in the case of *Natland (a)*, which was decided by *J. Gould* on the circuit, who decided that a

at injury to send him away from a good trade at *Hinton* *wet*, to perhaps half an acre of land, wherein he has but *erm.* 1 *Str.* 476. 2 *Bott.* 513. *pl.* 567.

E. 8 G. 2. *R. v. St. Mary, Berkhamstead.* The husband away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her *Northchurch*, and she and her children went to live there. The question was, Whether by continuing therein 40 days, she gained a settlement? The court seemed to be of opinion, as it was not known that the husband was dead, he must be supposed to be alive, and in that case that the wife could gain a settlement for herself, but must follow the husband's settlement; and that the husband having not resided 40 days *Northchurch*, in the said house unremovable, he had gained settlement there. 2 *Seff. C.* 182.

M. 25 G. 2. *West Shefford v. Baydon.* John Bird came to *West Shefford* with a certificate from *Baydon*. During his stay at *West Shefford*, he became beneficially entitled to a leasehold estate of 14l. a-year there, determinable upon his life. Upon which he entered on *November* 17th, and continued in possession till the 15th of *December* following, being 28 days only, when he died. — By the court: In all cases, whether of ownership of land, or renting 10l. a-year, residence of 40 days is necessary. And the case of *Mursley Grandborough* was cited as a case in point; in which it is holden by the court, that any person who has an estate of his own, either freehold, copyhold, or a beneficial term for years, by act of law (as by descent, marriage, executorship, administration) may dwell upon it as his own, and he is removable; and will gain a settlement if he continue 40 days, though under 10l. a-year. But he must abide 40 days. And neither he nor his can be removed to it from any other place, unless he shall have resided 40 days. *B. S. C.* 307. *lott.* 515. *pl.* 570.

But residence upon the same estate is not necessary, provided the residence be within the parish. As in the case of *Ston v. Sydbury*, *E.* 12 G. 2. A person who lived with his family at *Sowton*, having an estate at *Sydbury*, which the wife gave up, went thither and lodged in an alehouse as a tenant, without having any certain room there, and staid from *September* till *April*, but sometimes went to *Sowton*, where his children and family were, and to other places as his occasions required, possessed and managed his estate, by repairing fences, hoeing turnips, and the like. The question was, whether such inhabiting, and not upon the estate, would gain a settlement? And the court were of opinion it would, that it made no difference whether it were in his own house or in an alehouse: for being in the same parish he

But residence upon the same estate is not necessary, provided it be in the parish.



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2 *Bott.* 522. pl. 5

Residence in the
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estate is, is suf-
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R. v. Houghton
South Shields to
sessions. The pa-
copyhold houses,
house at *Sedgefield*
to *R. W.* the free
undertaking to G.

pauper continued in the receipt of the rents for several years, and then sold the same for 130l. In support of the order of sessions it was argued, that the pauper's residence in *S.* where he had an estate of his own in the occupation of another, would not give him a settlement there. 1st. Because it was accidental only, and for the special purpose of repairing the house; and for this they cited *R. v. Catherington*. 2dly, Because, for the purposes of a settlement, the owner ought to be in the actual possession of it; though according to *R. v. Sowton* it is sufficient if the owner reside in the parish. And they cited *R. v. Dunchurch*, to shew that where the property is leased to another, a residence upon it will not gain a settlement — (But *per* Lord Kenyon Ch. J. That was the case of a *purchase*, and a distinction has always been taken between cases where the party came to his property by his own act, or by operation of law.) — And it was also said that the general expression which runs through all this class of cases, that a party shall not be removed from *his own estate*, seemed to imply that he must be in *possession* of it, though he need not actually reside in it. On the other side it was argued, that in *R. v. Catherington* the mortgagee was in possession, and there did not appear any surplus on which the interest of the mortgagor could attach. That in *R. v. St. Michael's, Bath*, the insolvent had conveyed all his interest to trustees, and no probability of a surplus; and the possession of it was afterwards fraudulently obtained by him. Here the pauper had a substantial freehold interest in the parish where he resided, and an undisputed residue in the copyhold premises. In *R. v. Sowton* he resided, not on his estate, but at an alehouse in the same parish; yet he gained a settlement there. And further, 1st, A man cannot be removed from his estate devolved on him by operation of law, whatsoever the value may be; 2d, A residence for 40 days irremovable will gain a settlement, except in case of a purchase under 30l. 3d, It is enough to reside in the same parish. *Ryship v. Harrow*, *Sowton v. Sydbury*, *R. v. St. Nyott's*, *R. v. Hasfield*. 4. The party need not actually occupy his estate. It is sufficient to reside in the parish where he has a freehold. — Lord Kenyon Ch. J. was clear that a settlement was gained at *Sedgefield*, and said that he was decided by the case of *Hasfield*, where the child residing with his grandmother, could not be taken to have been in the actual occupation of the property; nor did the judgment of the court proceed upon any such ground. — *Grose* J. agreed, That a mere residence in the parish where the estate was, was sufficient. — *Lawrence* and *Le Blanc* justices, doubted; but afterwards the court were all agreed that here was a settlement gained in *Sedgefield*. 1 *E. R.* 247. 2 *Bott.* 516. *pl.* 571.

Sect. XIV. Of settlement by serving a parish office.

1. What office will confer a settlement.
2. Of the time.
3. Of the residence.

By the 13 & 14 C. 2. c. 12. Forty days' inhabitancy shall gain a settlement.

And if any person who shall come to inhabit in any town or parish shall for himself, and on his own account, execute any public and annual office or charge in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement in the same. 3 W. c. 11. s. 6.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10l. or shall execute some annual office in such parish, being legally placed in such office.

Deputy constable gains no settlement.

For himself and on his own account] Therefore a person sworn into and serving the office of constable, as deputy to another, doth not thereby gain a settlement. 19 Viner, 379. *Lothsome v. Sheriff Hales.*

H. 4 G. 3. *Winterbourn v. St. Philip and Jacob.* The custom was for the constable to be presented by the jury at the leet. The jury presented *Richard Bayly* esquire, who procured the pauper to serve for him, in order to gain the pauper a settlement. The pauper accordingly was sworn into the office by a justice, and served the same for a year; but was not presented thereto at the court leet, as constable in his own right. By the court clearly: He gained no settlement. B. S. C. 520. Bl. Rep. 452.

H. 9 G. 3. *Allcannings v. Patney.* The house occupied by Mr. Amor being in turn to furnish a tithing-man for the parish of *Patney*, the leet jury presented him to that office. And he, by leave of the court leet, put in his place *Thomas Palmer*, a common labourer, an housekeeper living in the same parish; who was sworn in accordingly at the said leet, and served the said office for a year; but Mr. Amor paid him all his expences attending the execution of it.—By the court: *Palmer* gained no settlement in *Patney*; for clearly he served for *Amor*, and did not execute the office for himself and on his own account. B. S. C. 634.

Constable serving by deputy gains a settlement.

But in the case of *R. v. Hope Mansell*, E. 23 G. 3. it was determined, that a person chosen and sworn into the office of petty constable, but who did not serve the office himself, but hired another person to serve as his deputy, thereby gained a settlement. Cald. 252.

Amor

Annual office] For what is an office or charge, see *post*. R. *Parish clerk is an annual office*
v. Mersham, this title.

H. 9 An. Gatton v. Milwich. A person being chosen *parish clerk* by the parson served for several years, and received his fees and dues.—By the court: It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him: for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish. *Cases of S. 241. 2 Salk. 536. Foley, 123. 2 Bott. 157. pl. 208.*

And in the case of *R. v. St. Mary, Berkhamstead, E. 8 G. 2.* The court seemed to be of opinion, that the executing the office of a *parish clerk* is sufficient for a certificate-person to gain a settlement; for it is an *annual office* and more. *2 Sess. C. 182.* And it is not necessary for a *parish clerk* to be licensed by the ordinary, in order to be legally placed in such office. *2 Str. 942.*

T. 13 G. 3. Helfington v. Over. Two justices by their order remove the Reverend *John Langhorn* from *Helfington* in the county of *Westmorland*, to *Over* in the county of *Chester*. The sessions, upon appeal, confirm that order, and state specially: That on the first day of *October 1766*, the vicarage of the parish of *Over* was sequestered for three years, or till the bishop should release the same: That on the twelfth day of the same *October*, the said *John Langhorn* was ordained deacon by the bishop of *Chester*, in order to supply the cure of *Over* during the sequestration: That from the 15th of the said month, to the 15th of *June 1768*, he by an exchange with the curate at *Aston*, resided and did duty in the parish of *Aston*, but received his salary regularly from the sequestrators of *Over*: That from the said 15th of *June 1768*, to the first day of *October 1769*, he resided and did duty as curate at *Over*, when the sequestration ended: That it did not appear that he had any licence to the curacy of *Aston*.—*L. Mansfield*: There is no colour for considering this as an annual office: It is no office at all. And Mr. *J. Aston* said, You cannot call it an annual office, when the sequestration may be determined at any time. It is not like the annual office of a constable or a tithing man. They are appointed generally, and to serve for a year. That of *parish clerk* is a freehold; and it is upon that foot that a *parish clerk* gains a settlement. The other two justices concurred. And both the orders were quashed. *B. S. C. 746. 2 Bott. 165. pl. 219.*

R. v. Wantage. M. 41 G. 3. R. Puzey, clerk, was nominated by the rector of *East Lochnige*, to be curate of the same, and was duly licensed as such, by the bishop, who assigned

Curate.

Poor. (*Settlement.*) [Sect. XIV. (1.)]

him the yearly stipend of 45l. The license authorized the curate during pleasure, "To perform the office of curate in the parish, &c. in reading the common prayer, and performing other ecclesiastical duties belonging to the said office, according to the form prescribed," &c. *Puzev* resided on the said curacy the same year, and performed the duties thereof for six years, during which time he resided in a parsonage house within the said parish. The question was, Whether this was a service of an annual public office, chargeable under the act? And the sessions were of opinion that it was not, and accordingly quashed the order of removal, removing him from *Wantage* to *East Lockinge*. Lord *Kenyon* Ch. J. There is no pretence for considering this as an office, the executing of which for a year will give a settlement. The statute of 3 W. 3. c. 11. was evidently intended to be confined to inferior parochial officers, such as constables and the like, known to the parish; and though in some instances the construction has been carried further, yet I am not inclined to extend it to cases still further from the contemplation of the legislature. Order of sessions confirmed. 2 E. R. 65. 2 Bott. 169. 224.

H. 29 G. 3. *R. v. Liverpool*. *Samuel Littlemore* and his family were removed from *Liverpool* to *Stourton*. The sessions reversed the order, subject to the opinion of the court on the

office in *Liverpool*. The executing of an annual office is equal to giving notice, but the execution of this office in *Walton* was no notice to the parish of *Liverpool*. The sexton is appointed to the church, and not to the church yard; for it appears from the definition of a sexton in *Burn's Eccl. Law*, and *Chamb. Dict.* that he is an officer to take care of the vessels, vestments, &c. belonging to the church, and to attend the minister and churchwardens at church; and this office is entirely distinct from that of a grave digger. — *L. Kenyon Ch. J.* There is no doubt but that part of the office of sexton consists in digging graves: This is different from that of the sacrist, which is an office scarcely known since the reformation, except in some of the cathedrals; whose duty it is to take care of the sacred vestments. And it is as clear, that the office of sexton is a public office within the meaning of the 3 *W. & M. c. 11. s. 6*. In this case the church yard lies in two parishes, and the sexton gained a settlement in that in which he resided. — *Per curiam*: Order of sessions confirmed. 3 *T. R.* 118. 2 *Bott.* 166. pl. 221.

H. 9 Ann. St. Mary v. St. Lawrence in Reading. Mr. *Foley* says, the question was, Whether the being (a) warden for the borough, and serving that office for a year in the borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And, by the court, it was held to be an office, the serving of which for one whole year was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley*, 121. — But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office doth not extend into several parishes. Mr. *Viner*, from a manuscript note which he had of this case, says, The office is mentioned there to be warden of the borough (which is most likely,) being in nature of a *titlingman*, to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a public officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him. — And, by the court, it was held a good settlement, being

Warden for a borough gains a settlement in the parish in which he lives.

(a) *Note.* In the last edition of this book, this question was stated as arising upon the fact of serving the office of churchwarden, but on reference to the books, it appears that the office was that of warden.

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2 *Bott.* 158. *pl.* 213.

Tithingman.

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an annual office in the
of the act. 1 *Str.* 444

Whether enter-
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tion of a year, is
sufficient, *Qu.*

H. 8 G. 2. Holy
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expired. The court in

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the year was expired?

for want of complaint
chargeable. *Foley*, 123.

158. *pl.* 211.

Borholder.

M. 17 G. 2. Wing
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legal placing in the office. But it is stated here negatively, that there was no presentment, no admission or swearing. So that there is no foundation for supporting a legal placing. 2 Str. 1299. B. S. C. 223. 2 Bott. 161. pl. 214.

T. 32 G. 3. *R. v. Whittlesea*. Removal from *Crowland* to *Whittlesea*, which was quashed at the sessions, subject to the opinion of the court on the following case:—The pauper for upwards of twelve years immediately before his removal resided in *Crowland*, where he was legally chosen an hog-ringer for the parish of *Crowland* for one year, at a court leet for the manor of *Crowland*: he was presented by the jury for the said office, and was sworn therein, and paid 4d. for the oath, and he served such office two years on his own account. The duty of such office is to attend the open commons, to see that all hogs turned thereupon were rung, and such hogs as were not rung to take to the pound, which he frequently did, and he always received 1d. for impounding, and 6d. for ringing each hog. The appointment to such office is of great antiquity, and serviceable to the inhabitants of *Crowland*. — L. Kenyon Ch. J. It is stated in the case that this is an annual office of great antiquity, and serviceable to the parish at large, and that there is an oath of office; therefore it seems to me, that it is a public annual office within the meaning of the act. *Every employment in a parish is not indeed equal to express notice, though it be a matter of notoriety to the parish.* It was once made a question, Whether shoeing the horses of the lord of the manor was not equal to notice? but it was determined not to be equivalent. If this person had been hog-ringer to certain individuals only, he would not have thereby gained a settlement; but he was not merely an officer of A, B, or C, but of all the inhabitants of the parish. It has been held, that a tithingman, a boroughholder, an ale-taster or a hayward, may gain a settlement by serving either of those offices; and the latter, whose duty it is merely to take care of the fences within his district, cannot be distinguished from this case. — Order of sessions confirmed. 4 T. R. 807. 2 Bott. 166. pl. 222.

Hog-ringer.

Notoriety of an employment not sufficient.

T. 27 & 28 G. 2. *Whitchurch v. Overton*. It was stated, that the pauper was nominated at the court-leet, and sworn into the office of *bailiff or ale-taster* for the borough: That he executed the office in the borough for a year: That the said office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court leet there: That the borough is not one fifth part of the parish: That the bailiffs have never executed any authority over the parish at large: That great part of the parish knew nothing of such office: And that new married men, and new comers, were frequently nominated for the sake of colts.

Bailiff or ale-taster for a borough.

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they declared he had a few
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namely, a tenement of 101
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244. 2 Bott. 162. pl. 215

Note ; A schoolmaster is i
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shall be utterly disabled, an
the same shall be void as if
he is a protestant dissenter
legally qualified, he must
take the oaths, and make t
protestant dissenting minist
c. 44. whereof the clerk
proper evidence, For whi

Collector of the
duties on births
and burials.

Bisham v. Cook. 7 G. 2.
fact specially, adjudged the
at *Bisham*, because when he

thing, of which the parliament thought it impossible but the parish should have notice: Can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners; that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not to be a *parish office*, but a *public annual office in the parish*. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears on looking into the statute, that the power given to the commissioners is to appoint a *person who shall be collector of the duties for a year*, and then give in his accounts. It hath been held a settlement in the case of the land tax, and why not in this? And the order was confirmed. 1 *Str.* 411. *Foley*, 124. 2 *Bott.* 157. *pl.* 210.

H. 7. G. R. v. Hammond.—By *Pratt C. J.* Serving the office of collector of the land tax is a sufficient office to gain a settlement within the 3 & 4 *W. c.* 11. *f.* 6. for it is not necessary that the office should be a parish office: any office is sufficient so that by the notoriety of it, it may be presumed that the parish had notice of the person's being come into the parish. 2 *Bott.* 157. *pl.* 209.

Collector of the land tax.

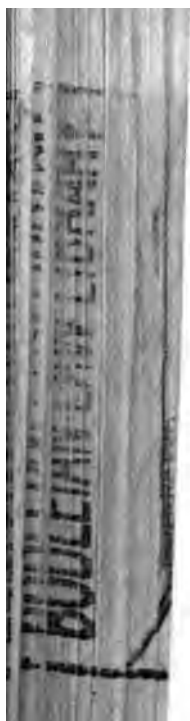
R. v. Ilminster. M 41 G. 3. Removal from *Honiton* to *Ilminster* and confirmed by sessions. The case originally stated for the court of *K. B.* was, That the pauper was appointed governor of the workhouse in *Ilminster* under the annual salary of 20 l. He served for five years, and regularly received his salary: At the end of that time he was dismissed: at the time of his appointment he was put by the parish officers into possession of certain apartments in the workhouse appointed for that purpose, and which had been occupied by the former governor. Upon the second statement, these words following were added after the word *officers*, “(in conjunction with two of the principal people of the town who acted as inspectors of the accounts, and conduct of the overseers).”

Governor of a workhouse.

And it was also stated, that the said office of governor was a public annual office. And the court said, that by this finding, “that it was a public annual office,” they had precluded any further discussion. 1 *E. R.* 83. 2 *Bott.* 167. *pl.* 223.

R. v. Mersham. H. 46 G. 3. Removal from *Boxley* to *Mersham*, and confirmed by the sessions. The material parts of the case stated to the court of king's bench, and upon which the question was decided, were, that the pauper at a vestry meeting offered his proposals to become master of the workhouse: that at a subsequent vestry meeting, at which 22 of the inhabitants were present, he was informed by the parish officers that he was appointed master of the workhouse of the

Master of a workhouse. Of the nature of the officers.



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by law, for the breach
not such as merely arise
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house cannot be an office
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and employment of the poor. I find no distinction between office and charge; if there were the question might admit of a different consideration. And he added, that the determination of the appointment at a quarter's notice, repelled the presumption that it was an annual office or charge upon the whole, therefore, it appears neither to have been an office, nor a public office, nor a public annual office within the statute.—*Lawrence J.* said, it was clearly no office; only an employment arising out of a contract, between which and an office there is a great distinction. (*R. v. Melbourne supra.*) And he agreed in the definition of the word *charge*, that it must be taken to mean something of the same kind with office, though it may not commonly be known under the name of an office.—*Le Blanc J.* agreed. Both orders confirmed. 7 E. R. 167. 2 Bott. 170. pl. 225.

2. Of the time.

Fittleworth v. Pulborough. M. 18 G. 2. A certificate-man was elected and sworn a tithingman for a tithing which did not extend through all the parish of *Fittleworth*, but comprehended that part of it where he resided. He executed the office a little more than five months, and then became actually chargeable, and asked relief. Whereupon two justices removed him, and their order upon appeal was discharged. And by the court: The justices had jurisdiction to remove him, though in execution of the office, he being become actually chargeable. It is not necessary that the office should extend throughout all the parish: the act only requires executing some annual office in the parish. But it must be executed for the space of a whole year. And the present case being an execution for less than a whole year, it did not avoid his certificate, and consequently did not gain him a settlement at *Fittleworth*. B. S. C. 238. 2 Bott. 172. pl. 226.

Serving a part of the year only.

Cold Ashton v. Woodchester. H. 31 G. 2. There was a custom to serve the office of tithingman, for half a year only at a time.—By L. Mansfield C. J. This cannot be an annual office to gain a settlement. In this case the pauper had served the office of tithingman in *Cold Ashton* for half a year, and 20 years after for another half year. 1 Burr. 502. Bott. 174. pl. 227.

Serving for half a year at a time only.

R. v. Bow. H. 40 G. 3. The pauper, at a Michaelmas court leet holden by adjournment for the manor and borough of *Chumleigh*, Nov. 16, 1792, was appointed to the office of ale-taster of the borough, and duly sworn according to the custom of the manor, to execute the said office for one year thence next ensuing, or until he should be lawfully discharged from the same. He entered upon the office, and served till

of the appointment. As
On the other side the case
shew that by custom a hi
than a year would confer
clearly that no settlement
pointed out the distinction
in that case there was a h
another. But here the ap
it should please the stewart
2 Bott. 175. pl. 229.

3. Of

In what place the resi
settlement will be, may be
pool, *St. Mary v. St. Law*
v. St. Mary Calendar's, an

Sect. XV. Of Settlen

1. Of Inhabitancy.
2. Of the being charge
 - (a.) The tenapt
 - (b.) Of the land
3. What taxes are wi
rate, and other ta
4. Of The 35 G. 3. c.

tlement therein by being charged with and paying his share towards the public taxes or levies of such place, for and on account, or in respect of any tenement not being of the yearly value of 10 l. s. 4.

In respect to this statute, it is very clear that the legislature meant that no person should gain a settlement after the passing of the act by being rated and paying; the words *who shall come into any parish*, mean who shall *inhabit* there. It was intended to make an end of this head of settlement law in future.—*Per L. Kenyon Ch. J. In R. v. Islington, Norfolk, H. 41. G. 3. 1 E. R. 283.*

But by 9 & 10 W. c. 11. *Persons residing under a certificate shall gain no settlement by being rated to and paying any such levies, taxes, or assessments.*

1. Of inhabitancy.

Shall come to inhabit] In the case of *R. v. St. Michael at Thorn in Norwich, H. 36 G. 3.* it was determined; that where a person is rated in one parish and resides in another, he does not gain a settlement by paying such rate: And *L. Kenyon C. J.* added, The statute says, that any person who shall inhabit in any town or parish, and be charged with and pay his share towards the public taxes of the said town or parish, shall thereby obtain a settlement; but in this case the pauper's husband lived in one parish, and was assessed in another, therefore this does not come within the statute of *William. 6 T. R. 536.*

2. Of the being charged.

Shall be charged with] Although the rate be in form, or in the manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement: For it would be hard, that one of the parish should come and say, that it was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. 19 Vin. 386. *St. Giles's, Cripplegate v. St. Mary, Newington.*

If the rate be informal, still payment of the sum assessed is sufficient.

In the case of *R. v. Edgbaston, H. 36 G. 3.* it was determined, that if a person's name be inserted in a rate after payment, it is not such a rating as will gain a settlement. 6 T. R. 540.

But not if the name be inserted after the rate is paid.

(a.) The tenant must be the person charged.

Shall be charged with and pay his share towards the public taxes] *M. 13 G. Sealon Tongall v. Worpleston. The land.*
VOL. IV. H h lord

The person paying must also be the person

rated; and he must be the tenant.

There must be both a rate made upon, and payment by the person claiming a settlement.

lord was rated to the poor for the tenement, as being in his hands, and the tenant paid the rate.—By the court: The tenant doth not gain a settlement, unless he be both rated and pay. *Foley*, 123. 2 *Seff. C.* 122.

E. 4 G. 2. Kinver v. Kingwinford. A person rented a tenement and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of *Richard Cotes* that rented the tenement before was kept in the levy books.—By the court; This was no settlement. *Foley*, 120.

M. 9 G. 2. Sarah v. Bovington. The landlord, who never occupied the house, was charged to the poor rate; but the tenant, on demand of the overseers, paid it.—By *L. Hardwicke C. J.* and the court: The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay, in order to gain a settlement. *B. S. C.* 73.

M. 10 G. 2. R. v. Bramshaw. The landlord of the house, who was also overseer of the poor, was charged to the poor rate; but the tenant on demand of the said landlord, paid the rate.—By the court: it is a settled point, that a person must be rated as well as pay; otherwise he gains no settlement. *B. S. C.* 98.

H. 10 G. 2. Lower Walton v. Appleton. The father was rated, and the son who occupied the tenement paid the rate.—By the court: This gained no settlement to the son. *B. S. C.* 100.

The rate must be on the occupier.

H. 21 G. 3. Bailey v. Heckmondwike. The mother occupied the house, and was rated and paid the taxes till the time of her death; after which, her son occupied the house and paid taxes, but the parish officers continued her name in the rate, knowing at the same time that she was dead.—By *L. Mansfield*: There must be such a rating, and paying, as to shew manifestly that the parish had notice. Here the rate was continued in the name of a dead person, whom the parish officers knew to be dead. The rate ought to be made on the occupier, and could be on nobody else. This (he said) was determined in the case of *R. v. Walfall*, where the rate was "*Late Lowbridge's*," *Doug.* 543. *Cald.* 103.

But a person may be rated by another description than that of his name as "occupier"

It is not necessary that the occupier should be rated by name [As in the case of *R. v. Brightmen*, *E. 8 G.* Where a man lived in a place called *Hoscoe's* tenement, and paid taxes there by the name of the occupier of *Hoscoe's*; this was adjudged to be a sufficient designation of the party, so as to gain a settlement. 8 *Mod.* 38. 3 *Burr.* 1062.

or "tenant."

T. 31 G. 2. Painswick v. Cirencester. The pauper, *Isaac Moorman*, took a house in *Cirencester*, of one *Thomas Clifford*, and agreed to pay the land tax, and poor taxes, and all other taxes.

taxes. The rating was thus: "*Thomas Clifford, or tenant.*" *Moorman* paid the taxes; and the overseers gave receipts to him in his own name. The landlord *Thomas Clifford* lived five miles off. It was urged, that *Isaac Moorman* himself was not rated; being neither expressly named, nor even personally hinted at. But the court was clearly of opinion, that this man was sufficiently charged, to notify to the parish of *Cirencester* that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. *B. S. C. 465.*

M. 18 G. 3. Asbley v. Walsall. The pauper *Joseph Dean* took a farm in the borough of *Walsall*, and paid the poor rates in his own right, which were charged in these words only, *Late Lowbridge's house*, 2l. 6s. 0d.—1s. 6d. That various other tenements in the said borough were charged in the same manner after new inhabitants had come into them, who severally paid the rates for them: That this tenement had been so charged ever since one *Lowbridge* left it. The question was, Whether this *form of rating* was sufficient to gain a settlement, as there was no doubt of the pauper's having paid the rate?—By *Aston J.* and the court (*L. Mansfield* being absent): It is agreed that the person must be both rated and pay; and as to the manner *how* he is to be rated, it is clear, that his name need not be inserted in the rate: If the parish have sufficient notice of him, it is enough; paying under rating is equivalent to notice, and the officers have received the rate of this man for two or three years, and therefore must have known him; and it is stated that he *paid in his own right*: And it was determined that he thereby gained a settlement. *Cald 35.*

It is enough if there be a description sufficient to charge the tenant.

T. 28 G. 3. R. v. Llangammarch. The pauper was removed from *Llanwstyd* to *Llangammarch*, which removal was confirmed at the sessions, to whom it appeared, that the pauper in *May 1778*, rented a house and land in *Llangammarch* at 5l. *per annum*. No agreement was then made between the landlord and tenant about payment of the taxes. The house is called *Bryn Prwyf*, or *Waynllwyd*, and the land is rated to the poor tax in *Llangammarch*, by the name of *Waynllwyd*. The pauper lived one year in the house, but paid no taxes for it. In *September 1778* the landlord informed him, that taxes were wanted for his land, who desired the landlord to pay them, and he would repay him the same. In fact, no taxes were ever paid by or demanded from the tenant; but it appeared that the landlord paid the taxes, and that the pauper allowed them. The overseer of *Llangammarch*, who received the taxes from the landlord for this land, knew nothing of the pauper; nor whether or not he resided at this farm at the time. A rule was obtained to

But there must be a charge upon him: and if the rate be made in any other way than by name, it must appear that the tenant was notoriously such.

overseer knew nothing of at this farm. The reason paying taxes is, because it he is an inhabitant. The tion which has been take overseer, and that of the are the trustees for, and t and they ought to know habitants. And indeed, i would rather be, that the pauper resided in his farm. opinion. Rule absolute.

H. 21 G. 3. Croydon v. a rate for 2s. in the po " certificate. Occupier" The overseer claring he was assessed in t *Goodiff* objected, alledging The overseer opened the name therein, and threate did not pay it. *Goodiff*, In the afternoon of the with the vestry clerk, ar saying he had taken it b ceive it. The overseer l on which *Goodiff* threw t jected, that here was no

proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides, he has paid it, and against his will; and he shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement. *Doug.* 599. *Cald.* 108.

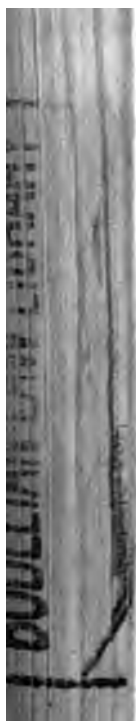
R. v. Coppull. M. 42 G. 3. Removal from *Standish* with *Langtree* to *Coppull*: and confirmed by the sessions. The respondents proved by the evidence of the pauper, that his father many years ago purchased a small estate for less than 30l. in *Coppull*, and occupied it himself, during which time the pauper lived with him as part of his family: the pauper's father during his occupation actually paid the parish rates or assessments in respect of his estate; but the respondents did not produce any rates or assessment, and had not given any notice for the production of any. And it was objected by the appellants that under these circumstances there was no legal or proper evidence that the pauper's father was charged with the same. *Per L. Kenyon Ch. J.*—It is impossible to argue that parol evidence may be given of rates which are not produced, nor any notice proved to produce them, nor any reasonable account given for their non-production. The best evidence was not given which the nature of the case would admit of. Both orders quashed. 2 *E. R.* 25.

The rate itself must be produced as evidence of being charged.

(b.) Of refunding to the tenant.

Openshaw v. Gorton. E. 4 G. 3. *James Bowden* settled at *Openshaw*, took a house and two closes at *Gorton*, and the landlord was to pay all taxes and levies but the window tax. The rating was thus, "*Bowden's*" The landlord himself for some time paid the taxes; but in the last year, the landlord having some disputes with the overseers about his assessments directed the overseers to call upon his tenant *Bowden* for a poor-rate, and a church-rate, and tell him that his landlord ordered him to pay, and he would allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it, did not allow it out of the rent till three quarters of a year after he left the estate (which was six days before the order of removal), when he repaid the money. It was objected that in this case the tenant was neither rated or paid. By *L. Mansfield C. J.* This was a tenant's tax, and he is assessed by name, *Bowden's*. The agreement between his landlord and him, that the landlord should pay it, is nothing to the parish. *B. S. C.* 522. 1 *Bl. Rep.* 463.

Landlord refunding to the tenant the amount of the tax paid.



Salary of an
excise officer,
rated to the
land-tax.

Salary of a cus-
toms officer,
rated to the
land-tax.

but to better the man's fa-
been settled, that the land
and his being taxed for
B. S. C. 5.

R. v. Wobly. M. 42
New Radnor, and qual-
resided as an officer of ex-
W. and during such reside
that parish for his salary,
tion of the land-tax affi-
evidence of the pauper th-
or any rate; the same bei-
and not deducted out of th-
If the rate had been paid t-
the hands of another, th-
himself; but here he neithe-
He was not affected by
deducted out of his salary,
it. This being a new case
paid the rate himself, nor
agent, it is better to abide
act, and to hold that he d-
Order of sessions quashed.

R. v. Axmouth. E. 47.
from *Axmouth* to *Lyme Regis*
The pauper's husband, dec-

had received the same from the collector of the customs, and the tax collector of the parish was at such times in the habit of trusting *Clarke* with a receipt, and the collector of the customs upon having this receipt given him paid *Clarke* the said sum, according to the order before mentioned, and *Clarke* paid the same to the tax collector of the parish. In the argument against the order of sessions it was urged that since the land-tax redemption acts (38 G. 3. c. 60. & 39 G. 3. c.) which perpetuate the tax on lands as a charge upon the lands in the parish, and leave the tax on salaries as a mere personal tax, the rating towards, and payment of it, in respect of the latter, no longer satisfied the words of the stat. 3 W. c. 11. But this the court immediately over-ruled, stating, that the tax was still a public tax leviable and collected within the parish,—Lord *Ellenborough* upon the remaining part of the case said, that the case of *R. v. Oakehampton* was not to be distinguished from the present. The land tax being a public tax within the stat. 3 W. 3. c. 11. The officer was both charged to it, and paid it within the parish, and nothing more was wanting to give him a settlement there. The case of *R. v. Weobly* was distinguished from the other cases by *L. Kenyon*, because there the officer did not pay the tax mediately or immediately; and, as he says afterwards, because the pauper neither *in fact* paid the rate himself, nor constructively by the hands of his agent. As to his being reimbursed afterwards, all the cases agree that that makes no difference, and that is not contradicted by *R. v. Weobly*. Order of sessions confirmed, 8 T. R. 383.

3. Of the land-tax.

See the three preceding cases.

And in the case of *Bramley v. Armley*, H. 9 G. 2. *John Close*, the pauper, after his settlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land tax only. It was urged, that as the land tax is always allowed or repaid by the landlord, the payment thereof can gain no settlement to the tenant.—By the court: It hath been a great doubt, whether in this respect the legislature did not mean parochial taxes. But this hath been long gotten over: and the land-tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it. B. 8. G. 75.

So also in the case of *R. v. Chidingford*. H. 30 G. 2. It was moved to quash an order of sessions, not stating the case, but merely the question, Whether the tenant's paying the land-tax which was allowed to him again by his landlord)

Land-tax is a tax within the act.

M. 33 G. 2. The tenant tax; which was allowed his account with him for had been often and fully settled. And upon that the court adjudged according

H. 15 G. 3. Carshalt Thomas Rummels, lived in to *William Bridges esq*, payment was, "Landlord rate" and tenements in the The court were of opinion rated, and not the tenant the poor man; but they to be got over. *B. S. C. 80*

E. 17 G. 3. R. v. St. James Turner, a labourer the parish of *Portsea*, was *Portsea*, and resided there officers in the said dockyard it was adjudged that he to *Caf. 24.*

E. 23 G. 3. R. v. M. were removed from *M.* quashed the order, and the pauper inhabited for several years of *Mr. C.*

It may be inferred from the form of rating, who is the person rated; and in the case of

t *Heard* paid the said 9s. 9d. to the collector who deduced the same. — By *L. Mansfield*: The question is, Whether the landlord or tenant is the person charged? The assessment does not say who is, but the names of both landlord and tenant are used. The rate alone then in this case is no ground upon either. The answer to this question must therefore be gathered from other circumstances. In the first place, Who ought to be charged? Undoubtedly the occupier. The landlord, it is true, is the debtor, but the rate is rated at the occupier. The parish cannot tell who is the landlord, or who has a rent charge. It is upon the occupier the officer of government takes his remedy; and though the landlord is directed to allow the sum levied out of the rate, the parish have nothing to do with transactions between landlord and tenant: This is a matter between them; but for the sake of the public, the occupier, the ostensible person, is considered as the person first liable. The next consideration is, What does the assessment profess to be? It professes to be an assessment on the *inhabitants*, that is, the occupiers; the landlord may or may not be an inhabitant; the occupier must be. Then of whom is it demanded? Of the occupier. Who pays it? The occupier. We may therefore infer from the circumstances that which is omitted in the assessment itself; and intend here, that which was expressed in the case of *R. v. Carshalton*; with which the present case does not interfere. — Order of sessions quashed.

276.

24 G. 3. *R. v. Endon, &c. Thomas Lowell* and his wife were removed from *Tittesworth* to the united townships of *Endon, Longdon, and Stanley*. The sessions confirmed the order, and stated the following case: That the said *Lowell* being settled in *Endon*, rented a cottage of *Lord Macclesfield* at *Lady-day* 1776, in the hamlet of *Tittesworth*, at a year. And at the time of taking, it was agreed that the pauper should pay the land-tax and all other taxes; but it does not appear that this agreement was known to the parish officers of *Tittesworth*. The pauper entered at *Lady-day* 1776, and continued until he was removed in *December* 1782, all the time he paid the land-tax for the premises; but at *Michaelmas* 1780, being ill and reduced in circumstances, he asked the parish officer to be excused, which he promised to endeavour to do, and he never paid the land tax after *Lady-day* 1781. And it appeared from the rates of 1781 and 1782, that neither the pauper's name, nor that of any other person living in the said premises, were inserted therein, nor was *L. Macclesfield* rated for the same, though the pauper continued on the premises till *December* 1782: but it appeared that some other premises of *L. Macclesfield's*, in the occupation



Names of proprietors | Names of
Earl of *Macclesfield* | *Thomas*

The only rates produced and 1779, 1780, 1781, and these orders, *inter alia*, inserted in the rate in 1780 regulating the right of vote directs the very form of a rate; that it must therefore name was now introduced a rate, and not with any view person charged. — The count — By *L. Mansfield*: The question of fact. Here is the face of the rate it stands in circumstances? In the first the tenant, and he has paid of his poverty, applied to the future. This is complied never charge any body a tenant ought to pay, or no landlord was never intended need be incurred from the tenant; it does not prevent by name, as was done in They may still declare the The other justices con

meon, and occupied a house there till 8th May 1784, the day he was removed: That *William Clarke* was the proprietor of the said house: That on 7th June 1783 a land-tax assessment for the titthing of *Eastmeon* was made in the following form: "County of *Southampton*, to wit. For the titthing of *Eastmeon* in the said county, an assessment made in pursuance of an act of parliament passed in the 23d year of his present majesty's reign, for granting an aid to his majesty by a land-tax to be raised in *Great Britain* for the service of the year 1783."

Rentals	Names of Proprietors	Names of Occupiers	Sums assessed
1 0 3½	Mr. <i>William Clarke</i>	<i>Charles Scullard</i>	0 4 0½

That the pauper paid *Joseph Tyrrell* (who called at his house) 2s. 0½d. being for one half-year of the said assessment, and *Tyrrell* gave him the following receipt: "October 20th, 1783, Received of Mr. *Charles Scullard* 2s. 0½d. for half a year's land-tax for Mr. *Clarke's* house, due at *Michaelmas* last past; per *Joseph Tyrrell*, assessor." That *Tyrrell* was collector of, as well as assessor to, the land-tax.—*L. Mansfield*: It has been decided over and over again, that the occupier must be presumed to be rated, against whom the first remedy lies as between him and the public. Here his name is in the rate, and the officer receives of him. There is not a tittle to shew that the parish meant to rate the landlord. The receipt only describes the premises, upon which the assessment was made.

—*Buller J.* It was expressly determined in *R. v. Mitcham* (a), that the land tax is *prima facie* a tenant's tax. Why? because all the remedies are against him; and without some new ingredients in the case, the point ought not to have been stirred again. It was not said there, that you might not rate the landlord. You may. It is so holden in *R. v. Endon* (b), &c. and *L. Mansfield* said there, that "it is a question of fact whether landlord or tenant is rated, and the sessions should state it: If they do not, the court must collect it from the circumstances that appear to them; and if nothing appear to the contrary, the occupier must be presumed to be the person." *Willes* and *Asbursft* were absent. Both orders quashed. *Cald.* 379.

M. 30 *G.* 3. *R. v. Folkestone.* *James King* and his wife and family were removed from that part of the parish of *Folkestone* which lies within the township of *Folkestone* in *Kent*, to that part which lies without. The sessions quashed the order, subject to the opinion of the court on the following case: On the 11th of *October* 1781 the pauper hired a house in the parish of *Folkestone* in *Kent*, of the yearly value of

(a) *Ante*, under this head.

(b) *Ante*, under this head.

The sessions were of opinions intended to be rated occupiers, inserted in the to distinguish the premises whom they were to apply Ch. J. This is the lanc tion first came before th a tenant who was rated gain a settlement by it. observed, that "that dou this case no question ca column of the proprietors the names of the tenants shew for what property t justices in this case hav bound to do) that the la *R. v. Mitcham (b)*, *R. v.* it was held that, as betw land-tax is the tenant's t and the tenant it is other rate itself, whether the l must be collected from o tax is *prima facie* a tenant to the contrary, the occ person rated. This idea

M. 25 G. 3. R. v. St. James, Bury St. Edmunds. Samuel Croft Purkis and his family were removed from *St. James* in the borough of *Bury St. Edmunds* to the parish of *Hopton*. The sessions quashed the order, and stated, That the pauper was settled at *Hopton*, and afterwards became an inhabitant and occupier of a tenement belonging to *Joshua Grigby* esq. in *St. James* in the town of *Bury*, at 5l. a-year, and had, during his residence there, paid the land-tax there, when demanded of him by the officer. The title of the rate was, "Borough of *Bury St. Edmunds* in the county of *Suffolk*, for the parish of *St. James* in the said borough. "An assessment made in pursuance of an act of parliament passed in the 23d year of his majesty's reign, for granting an aid to his majesty by a land tax, to be raised in *Great Britain* for the service of the year 1783," and made in the following manner :

Names of proprietors	N. of occupiers	What assessed and	Sums	assessed
<i>Joshua Grigby</i> , esq.	<i>Eastgate Street.</i> <i>Samuel Purkis</i>	where situated Tenant	4 0 0	0 4 0

All the other assessments were made in the same manner; and the collectors, who were parishioners, demanded the said tax of the pauper, who paid the same, and they gave him a receipt in the usual printed form, as follows: "The 25th December 1783, received of Mr. *Samuel Purkis* the sum of 4s. so much being assessed on the landlord for the third quarterly payment, pursuant to an act of parliament for granting an aid to his majesty by a land tax to be raised in *Great Britain* for the service of the year 1783. By *John Lawrence* collector." Whereupon this court doth adjudge, that the pauper, by the above rating and payment, has acquired a settlement in *St. James* aforesaid.—*L. Mansfield*: I stated in the last case that where it was uncertain who was rated, where the rate is silent, and there is no other collateral evidence to supply this defect, the law would presume that the tenant was intended to be rated, because *prima facie* it is a tenant's tax, and he is consequently first liable. But where the landlord is expressly rated, or where there is any collateral matter to shew that he is intended to be, there the legal presumption may be rebutted. Here is a strong piece of evidence coming out of the tenant's hands, to shew that the landlord was the object of the rate.—*Buller J.* This is not a presumption *juris et de jure*; it admits of contradiction. The receipt relates back to the time of the rate, and so it is not a rate of the tenant, but of the landlord; besides, the receipt is strong evidence as to the payment, that he paid it as agent to the landlord, as well as that the officer did not receive it of him in his own right,

Thomas Bastard having children, *W. Lewis* then desired the collectors *Bastard's* house in order the 6s. 9d. otherwise accompanied them to of *Bastard's* daughters, they inquired for *Bastard*, she had a friend accordingly she went to one *Mrs. Owen*, who received thereout the last a receipt for the tax, by sessions. — By the common money was raised for him in order to protect him would otherwise have 3 T. R. 550.

His share] M. 10 G. son lived with his mother rated and paid the tax was objected, that this share of the public tax must be in proportion to

band occupied a house in *Egremont* till his death. A year after they occupied the house, a churchwarden called at the house for an assessment (generally called in the parish a *couple fests*, but which the pauper *Sarah* understood to be a *church fests*), and told her that her husband was assessed, and she paid her 1s. 2d. as the sum assessed. Some time afterwards she paid 1s. more upon a similar demand made by another churchwarden. And afterwards another shilling was paid, and the assessment was as follows :

A rate made too narrowly is a good rate, for the purposes of a settlement.

“ 1791. An assessment upon the householders in the parish of *Egremont*, at 1s. *per couple*, for the ornaments and repairs of the parish church ;

× *John Tidyman* - - - - - s. 4
I 0

“ We whose names are hereunto subscribed (being of the church vestry) do allow of this as a regular assessment ; as witness our hands, the 28th of *March* 1791.”

(Signed by the minister and eight other persons, including the two churchwardens.)

The mark × opposite *Tidyman*'s name denoted that he had paid the assessment. It appeared from the churchwarden's accounts of that year entered in the vestry book, that the sums received under that assessment, were in part laid out on the repairs and ornaments of the church, and the rest in payment of a debt due to the preceding overseers. But that assessment being insufficient, another was made in the same year in aid of it, upon the landholders of the parish, who were never assessed, but when the assessment upon the householders proved insufficient. And it was frequently the practice for the select vestry of the parish to make out these assessments, in the form of a list of the names of the inhabitants liable to pay ; charging the householders at 1s. each, and the widowers and widows, householders, at 6d. each ; which assessments were afterwards submitted to and approved by the general parish vestry. — In support of the order of sessions, it was said, that the rate was clearly bad, as being made upon the householders only, and not upon the parishioners at large, and therefore no settlement could be gained by being assessed to and by paying it. — But Lord *Ellenborough* Ch. J. said, that if a public tax were laid too narrowly, it was not less a public tax on that account. That this was a *tax*, and it was *public*, and it was *charged* and *paid* within the parish. — And he asked what else was required to meet the act of parliament ? (3 *W. 3. c. 11. s. 6.*) Order of sessions quashed. 9 *E. R.* 203.

Of the public taxes or levies of the said town or parish] By the Scavengers and
9 *G. 3. 7.* No person who shall be assessed to the scavenger's highways.
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bridges) charged by the
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4. *Of the*

However the 35 G. 3. c
persons whatsoever, who
ship or place shall gain a s
or place, by being charged
share towards the public
township or place, for ar
tenement or tenements no
The mode of gaining a fe
paying public taxes obtain
be of 10l. a settlement ari
point to be ascertained, &
public impositions are sust
have retained the title for
tinued that relative to
M. 42 G. 3. it was holde
and paying taxes, cannot
only, without the produc
reasonably for the non-pr
was both the owner and c

Sect. XVI. Of certificates, and herein,

1. Of their form.
2. Of their delivery.
3. Of the persons protected by them.
4. Of their effect.
5. Of their continuance.
6. Of removing certificated persons.
7. Of apprenticeships as affected by certificates.

Before we come to treat especially of settlements, it will be necessary to speak somewhat of certificates, as affecting settlements several ways.

For although the 35 G. 3. c. 101. by rendering no one removeable till he or she become *actually chargeable*, has made it no longer necessary to grant certificates, yet as the parish officers retain the power to certify, as heretofore, that any particular person is a parishioner of their parish, and as questions upon the subject will probably arise occasionally upon certificates yet existing, it is necessary to retain the law upon the subject: at the same time the reader should recollect the alteration effected by the 35 G. 3.

By the 13 & 14 C. 2. c. 12. Power is given upon complaint of the churchwardens or overseers, within 40 days after a person is come to settle on any tenement under 10l. a-year, unto two justices (1 Q.), to remove such person to the parish where he was last legally settled, *unless he give sufficient security for discharge of the parish, to be allowed by the said justices.* s. 1.

And persons may go into any county, parish or place, to work in time of harvest, or at any other time, so that he carry with him a certificate from the minister of the parish and one of the churchwardens and one of the overseers, that he hath a dwelling, and hath left his family there, and is declared an inhabitant there, &c.

And by the 8 & 9 W. c. 30. it is enacted as follows: Forasmuch as many poor persons chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is therefore enacted, That if any person who shall after the 1st of May 1697, come into any parish or other place there to reside, shall at the same time procure bring and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to either of them, a certificate under the hands and seals of the churchwardens and overseers of any other parish, township or place, or the major part of them, or of the

was given: And then, an
person, and his children, to
otherwise acquired a lega
veyed and settled in the
tificate was brought. s. 1.

By the 9 & 10 W. c.
any parish by such certifica
soever to have procured a l
he shall really and bonâ f
yearly value of 10l. or sba
parish, being legally placed

By the 12 An. st. 1. c.
24th of June 1713, shall
be a hired servant, to any
any parish township or place
and not afterwards having
apprentice or servant shall
settlement in such parish, &
settlements in such place,
servants as aforesaid.

And by the 3 G. 2. c.
execution of the certificate
or one of the said witnesses,
are to allow the same, that
churchwarden or churchw
poor, whose names and se
severally sign and seal the

The form of which certificate may be this :

To the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland.

WE the churchwardens and overseers of the poor of the parish of Orton in the county of Westmorland, do hereby certify, own and acknowledge, that A. L. yeoman, is an inhabitant legally settled in our parish of Orton aforesaid. In witness whereof we have hereunto set our hands and seals, the ——— day of ——— in the year of our Lord ———.

Attested by
A. W.

A B. }
C. D. } Churchwardens.

B. W.

E. F. }
G. H. } Overseers of the
poor.

We J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the said county of Westmorland, do allow of the above written certificate. And we do also certify, that A. W. one of the witnesses who attested the same, hath this day made oath before us, the said justices, that he the said A. W. did see the churchwardens and overseers of the poor of the parish of Orton aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of A. W. and B. W. who are the witnesses attesting the said certificate, are respectively of their own proper hand writing. Given under our hands this ——— day of ———.

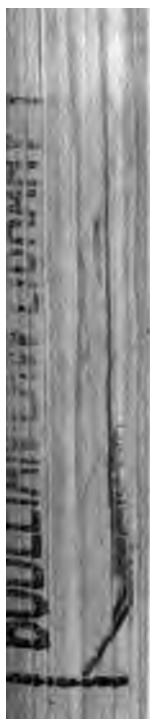
1. *Of the form of certificates.*

In the case of *R. v. St. Ives*, H. 3. G. 2. A mandamus was moved for, to compel the churchwardens and overseers to sign a certificate; but the court rejected the motion as a very strange attempt. 2 Sess. C. 128. 2 Bott. 561. pl. 153.

A parish is not compellable to grant a certificate.

The statute doth not require any particular direction: and therefore it is equally effectual, whether addressed to any particular place, or addressed in general terms, or not addressed at all, provided it contains an acknowledgment of the settlement of the persons certified for. As in the case of *St. Nicholas in Harwich v. Woolverstone*, H. 15 G. 2. The pauper came into the parish of St. Nicholas in Harwich, with a certificate from Woolverstone, addressed to the parish of Harwich near Dover court. The sessions were of opinion, as there was a mistake in the name of the parish in the address of the certificate, that Harwich could not be obliged to receive the pauper. But upon debate in the court of king's bench, it was ruled they were: For it is not to be considered as a certificate to

A misdirection will not vitiate it.



Certificate to be
signed by a ma-
jority of the
churchwardens
and overseers :
one signed by
two churchwar-
dens and two
overseers, where
there were six of
the former and
four of the lat-
ter, is void.

has performed its office
another for the same purpose
as often as the certificate
himself. *Ib.*

In *R. v. Lubbenham*,
be a particular parish in
ing the certificate.

*E. 14 G. 3. St. Mi-
samson Watkins* from
of *Tamworth*, and con-
kins, father of the pa-
parish of *St. Michael's*
with him a paper writ-
the words and figures
“ and overseers of the
“ county of *Stafford*.
“ of the poor of the
“ *Coventry*, do hereby
“ and family to be in
“ parish of *St. Michael*,
“ any time or times he
“ hereunto set our hand
“ the year of our Lord
“ churchwardens.
“ of the poor. Attest
“ Allowed by us whole
“ of his majesty's just

of *St. Michael*. and resided with his father, until he was removed by the order above stated to the parish of *Tamworth* aforesaid; from which order *Tamworth* appealed. Upon the appeal, it appeared, that there had been a uniform and constant usage in the said parish of *St. Michael*, to elect annually six churchwardens and four overseers. And the sessions being of opinion that the said paper writing purporting to be a certificate, and executed only by four of the parish officers, was not a valid certificate, and consequently that the pauper was at liberty to gain a settlement at *Tamworth* by virtue of the apprenticeship, confirmed the order of the two justices. It was moved to quash both these orders, for that the justices had made an erroneous determination in holding this writing not to be valid.—*L. Mansfield* was not in court. The other three judges thought it a hard case upon *Tamworth*, but they held themselves to be bound down by positive law. The statute is express and positive, that the certificate must be under the hands and seals of the churchwardens and overseers of the poor, or the major part of them. And as to fraud, the court cannot presume fraud, if it be not stated. (But Mr. J. *Ashurst* thought the justices might have considered it as a fraud.) *B. S. C.* 770. 2 *Bott.* 564. pl. 619.

In *R. v. Margam*, *E.* 27 *G.* 3. the same point was determined. 1 *T. R.* 775. 2 *Bott.* 565. pl. 662.

The appointment of one overseer alone for a township is bad in law, the stat. 13 & 14 *C.* 2. c. 12. requiring at least two; and therefore a certificate granted by one overseer only of a township is void: Such certificate, therefore, not being made pursuant to the 8 & 9 *W.* c. 30. gives no security to the certificated parish against the party therein named gaining a settlement in such parish. *R. v. Clifton*, 1 *E. R.* 168. 2 *Bott.* 573. pl. 629.

R. v. St. Margaret's, Leicester, *E.* 47 *G.* 3. The sessions on appeal quashed an order of removal, and the case reserved stated, *inter alia*, a certificate which recited that *J. R.* and *S. S.* churchwardens and overseers of the poor of, &c. acknowledged the paupers to be legally settled in their parish; the certificate was signed and sealed by the same *J. R.* and *S. S.*, and was duly allowed: The case further stated, that the same *S. S.* and *J. R.* were appointed the two churchwardens for the parish for that year, and *S. S.* was appointed the sole overseer; and the question for the court was, Whether such a certificate were valid? Per *Lord Ellenborough* *C. J.* The words of the 43 *El.* c. 2. are that the churchwardens of every parish, and 4, 3, or 2 substantial householders there shall be called overseers of the poor. The 8 & 9 *W.* c. 30. requires that a certificate shall be granted under the

And also when signed by one churchwarden and one overseer out of four churchwardens and two overseers. And also by one overseer of a township.

If there be two appointed churchwardens of a parish, and one of the two be also appointed sole overseer, a certificate signed by the two, as churchwardens and overseers, will not be valid.



Whether the churchwardens of a parish need to join with the overseers of one of its townships?

Whether those signing must be officers *de jure*, or *de facto*?

Evidence explaining the signatures may be received.

the overseers alone, or without them, but in no event does it give the churchwardens without the overseers.

In the same case of *Blanc J.* seemed to confide in the churchwardens of the township, which acknowledge the township. *Lord Kenyon* gave no opinion. — *Lawrence* by *Lord Kenyon C. J.* in (2 *Bott.* 570. pl. 627.) as granted by the majority of *facto*, though not *de jure*; conclusion to be drawn upon it by *Lord Kenyon* in that number of overseers than elected, it would be imp first and last, and to say that appointed, and that there would be bad.

In *R. v. Samborn*, *E.* 30 which *T. A.* and *R. B.* of the poor of the parish of *G.* paupers to be legally settled *G. C.*, and promised to receive. The case stated that

pauper, a common printed form of a certificate, acknowledging him to be settled in the said parish of *St. Lawrence*. It was signed and sealed by the parish officers, and attested by two witnesses. But the blanks for the allowance of justices were not filled up, and no name of any justice signed thereto. On his return to the parish granting the certificate, they relieved him until the time of this removal. — By *L. Mansfield* and the court: A certificate cannot conclude the parish, unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign a certificate: they have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularised. This certificate wants them: therefore it is no certificate within the act. And if it be not a certificate within the act, it cannot conclude the parish. *B. S. C. 581. 2 Bott. 563. pl. 617.*

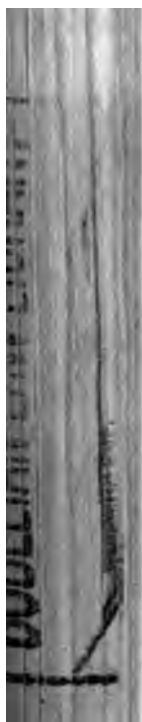
they are not obliged to sign it.

In *R. v. Bosson. E. 4 G.* It was decided that the justices who allowed the certificate, might also attest as witnesses; but that it must appear upon the certificate that they took upon them to act in both capacities. *2 Bott. 561. pl. 613.*

The justices who sign may be the witnesses.

H. 13 G. 3. Ashton Keynes v. South Cerney. The attestation of the certificate was thus: "Attested by *Anthony Brown* + his mark, *Paul Jenkinson*." The allowance of the justices was, "We two of his majesty's justices of the peace for the said county do allow of the above written certificate: And we do also certify, that the said *Paul Jenkinson* came this day before us and made oath, that he was present with the other witness above mentioned, and did see the said churchwardens and overseers of the poor severally sign and seal the said certificate, and that his name is of his own proper hand-writing." It was objected, that this was not a proper certificate, because the name or mark of *Anthony Brown*, one of the witnesses attesting the execution of it, was not proved before the justices to be of that witness's own proper hand-writing; and *Paul Jenkinson*, one of the witnesses, only proved that his own name was of his own proper hand-writing, but there was no sort of proof, either by him or any one else, of the hand-writing or mark of *Anthony Brown* the other witness. But the whole court were extremely clear that this was sufficient proof of *Anthony Brown*'s attestation. *Jenkinson* swears, that he was present with *Brown*, and did see the churchwardens and overseers severally sign and seal the said certificate. *B. S. C. 725. 2 Bott. 563. pl. 618.* [The distinction seems to be this: The justices are called in upon a twofold account: first, to allow of the certificate, if they

Proof of the execution to be made before the justices.



present case why the proof
expressed is obvious, namely
is a marksman; and it
name of a person who can
hand-writing.

R. v. I. of Farringdon
per's father came into the
a paper writing given him
certificate: This instrument
family to be, &c. in the
overseers and churchwardens
"April 17, 1736. Allowed
"duly executed as the
"appoints, *A. H. S. F.*
On the other leaf of the
ten as follows; "We
"two, &c. do allow of the
"tiff, that *J. J.* one of
"execution of the said
"us, that he did see the
"names and seals are to
"set, severally sign and
"names of the said *J. J.*
"scribed as witnesses to
"are of their own proper
"1736." The removal

marginal note being merely an allowance of the original certificate; and that therefore the certificate was not duly executed and attested within the 8 & 9 W. 3. c. 30.; and therefore there being no proof, either according to the statute of G. 2. or otherwise, of the due execution, it must be within the case of *Wootton v. St. Lawrence*, and therefore of no validity. On the other side it was answered, that the marginal signatures might be connected with the certificate of attestation on the other leaf, so as to bring it within the statute of G. 2.; and 2dly, that under the circumstances of the case, it was a valid certificate, being allowed by the justices according to the 8 & 9 W. although the directions of the 3 G. 2. were not observed. That as to the first, the certificate of attestation and the original certificate must be taken to have been written at the same time; that the signature need not be in any particular place. As to the 2d, the words of allowance in the margin are sufficient within the 8 & 9 W. 3.; the act requires no express words in which the allowance is to be made. The mode of proof by 3 G. 2. is substituted in lieu of other proof before the courts of law. In *R. v. Ashton Keynes*. (2 Bott. 563. pl. 618.) the court considered that the statute 3 G. 2. was passed to render the proof of the certificate more easy than it was under 8 & 9 W.; and that if good under the former act it was sufficient. Here it is good under the 8 & 9 W. 3. c. 30. and the attestation need not have been proved, because it is found by the case that it was delivered above 50 years ago. — *Asburs J.* The certificate must be allowed. If this question had arisen soon after the certificate was granted, and the parties had relied on the sufficiency of this allowance under 3 G. c. 29. I should have doubted whether the requisites of the act had been complied with; but this act was passed for the purpose of facilitating the mode of proving certificates, and was not intended to take away any mode of proof which existed before the statute. Now this certificate, having been granted above 30 years, it is not necessary to substantiate it by the mode of proof required by this act. Therefore on the ground of the length of time which has elapsed since the certificate was granted I think it is binding. — *Buller J.* said, that the certificate was good under 8 & 9 W. if it were proved. That that act was not repealed by 3 G. 2. c. 29. That all deeds above 30 years standing proved themselves. That as to the latter act, there was no particular form of allowance prescribed by it: that this instrument was in the nature of an order of justices, and every thing would be intended in support of it; that here they had allowed the certificate, saying, "being first proved to be duly executed as the statute directs," — *Grose J.* inclined to doubt whether or not all

2. Of the d

A certificate must be delivered to the parish officers at the time of coming into the parish.

In *R. v. Wensley*. H. 33 requires a delivery of the pauper goes into the certificate to the interest of the parish, as the parish officers be the means of introducing. 569. pl. 626.

But a certificate, thought by the parish granted with them when it was given it prevents the pauper gaining the parish after it is granted. *R. v. Wensley*.

3. Of persons

R. v. St. Peter and St. Paul. A pauper was removed from the county of Somerset to St. Peter and St. Paul, being likely to become chargeable to the order. The substance of the order was, that the pauper should be removed to St. Peter and St. Paul, and built thereon a cottage. To this they removed the pauper.

the certificate acts authorize the whole body of the poor, of whatever denomination, and with whatever object, to leave their own, and to remove into any other parish, provided they can obtain the protection of a certificate. *Cald.* 213. 2 *Bott.* 540. *pl.* 592.

4. *To whom it extends.*

Sherborne v. Thornford, E. 15 G. 2. *Humphrey Eyres*, father of *George Eyres*, the pauper, came by certificate from *Thornford* into the parish of *Sherborne* with his wife and family; by which certificate the said *Humphrey* and his wife and family were owned to be legal inhabitants of *Thornford*. In about two years afterwards, his wife died, and shortly after he married a second wife, by which second wife he had the pauper *George Eyres*. Which said *George*, when he was about 16 years of age, was hired for a year, and served that year in the said parish of *Sherborne*. The principal question was, Whether the son of a certificate person, born after the certificate, can gain a settlement, otherwise than a certificate person himself can? And by the court, The 8 & 9 W. c. 30. extends not only to the certificate-man himself, but likewise to all his family and all his children, whether born before or after the certificate. And the 9 & 10 W. c. 11. declares, what shall gain them a settlement in that parish to which they come by certificate, and restrains it to two methods only, which it specifies: and service is neither of these two methods to which it is restrained. B. S. C. 182. 2 *Bott.* 578. *pl.* 635.

A certificate extends to children born after the granting thereof, and of a second wife, married after the granting thereof.

So in *Bray v. Shottsbrooke*, H. 19 G. 2. *id.* 580. *pl.* 637.

And in *Buckingham v. Maids Moreton*, H. 25 G. 2. as a point clearly determined and settled. B. S. C. 314. 2 *Bott.* 580. (n)

R. v. Ipsley. T. 28 G. 2. A certificate was given by *Studley* to *Ipsley*, which acknowledged "Ann Causer, a spinster, and the child she then went with, to be legally settled in *Studley*:" *Ann Causer* was delivered of a child, and was afterwards removed with the child from *Ipsley* to *Studley*. The sessions thought that the certificate could not extend to a bastard child *en ventre sa mere*. But the court held that the parish of *Studley* were bound by this certificate, thus noticing the woman's being unmarried and with child, and acknowledging the child she then went with to be legally settled in that parish. B. S. C. 650. 2 *Bott.* 581. *pl.* 650.

A certificate stating the woman to be a spinster and with child, and acknowledging both to be legally settled in the parish so certifying, is bound to receive the child born in the certified parish.

R. v. Mathon. T. 37 G. 3. The parish of *Mathon* engaged by a certificate to receive and relieve M. C. with the child of which she was then pregnant, and all other children she might

But a certificate stating the woman to be unmarried and

to grandchild-
dren, nor to
children after
they become
heads of fami-
lies.

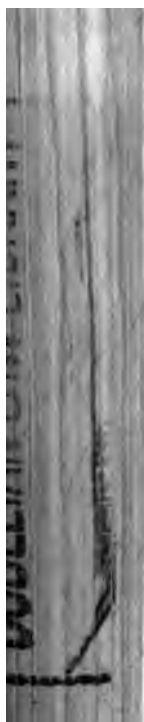
Durham. The sessions following case: That *J.* pauper's husband, being *Saints* under a certificate 1736. During his resid he had a son named *Tho* of his father's family, ex lived as a hired servant which service he retur married and had severa *Thomas* the husband of lived in *All Saints* till the tioned *Thomas*, when of and lived as a servant v *All Saints.* *J. Milburn* the grandson's service wit *Darlington*, leaving bet mily, and amongst them father and his wife died pauper, nor any of her *Thomas* the husband done *L. Kenyon C. J.* If this reason of decided cases, *minster Hall*, I should r But I perfectly well reme case was argued, so far f what was thrown out by

sion, expressly saying, that it was unnecessary for them to enter into the question. In this case two questions have been made; 1st, Whether by the grandfather's returning to *Darlington* there was an end to the certificate? I am strongly inclined to think that that was not an abandonment. If all the family had indeed removed back, that would have been an abandonment; but as his son was left behind, it was a sort of pledge that the certificate was not intended to be abandoned. It is not necessary however to determine upon that point, because on the other question I am prepared to give a decisive opinion. And my opinion is founded on the words and fair meaning of 8 & 9 W. 3. c. 30. By the words of that act, the parish to which the certificate is granted, is obliged to receive the certificated person, *together with his or her family*. Now what is the fair legal import of the word *family*? It is true that in construing a will, and where it is the intention of the testator that it shall extend beyond *the immediate children*, it may have that operation: but that is not the sense in which it is used in this act. In common parlance, the family consists of those who live under the same roof with the *pater-familias*; those who form (if I may use the expression) his fire-side. But when they branch out and become the heads of new establishments, they cease to be part of the father's family. I admit that a certificate extends to the son on account of the positive words of the act of parliament, he being part of the father's family (*a*); but when he himself becomes the head of a family, then the words of the statute, public policy, and the convenience of mankind, require that he should no longer be considered as part of his father's family, or be protected by the certificate granted to his father. I am not alarmed at the argument that this tends to the separation of children from their parents; for that is usual with persons in that station of life, who not being able to gain a livelihood at home, are obliged to go abroad into the world, either as servants or apprentices, after they have passed the age of nurture. It is as beneficial to themselves as it is to the community that it should be so; and their parents themselves will, if they judge rightly, form the same judgment. And this is not a singular instance in which children are taken from their parents; for in the case of parish apprentices, the children are put out by the parish officers, under the superintendence of magistrates, even without the consent of parents. If this point had been before decided, as was supposed, I should have adhered to the decision; especially as, according to the observation which

The family consists of those who live under the same roof with the *pater-familias*, who form his fire-side. When they become the heads of new establishments they cease to be a part of the father's family.

(*a*) *R. v. Sherborne, R. v. Bray, and R. v. Buckingham; ante, this same head.*

L. Mans-



by hiring and service. —
two questions; 1st, Whe
by the grandfather's return
grandchildren be within t
On the first point, I thin
by the grandfather's ret
him. The man to whom
whom the legislature had
according to the statute,
his family are *those only* wh
in the course of time, t
from the father, if the
granting the certificate, I
and as to all of them,
agree with my Lord —
to give no opinion on the
question he expressed hi
opinion. — Both order
588. *pl.* 644.

Also in *R. v. Heath*, 3
question, when *L. Kenya*
be understood that he ad
lington to its full extent,
in that case would be a g
plain that it could not
2 *Bott.* 614. *pl.* 662.

In *D. v. M...* *E*

and taking a separate house for himself, became the head of a new family, and was then in a condition to gain a settlement for himself in the certificated parish. The other judges agreed. 6 E. R. 397. 2 Bott. 619. pl. 666.

E. 33 G. 3. R. v. *Tesserton*. *John Wood* and his family were removed from *Great Ryburgh* to *Tesserton*. The sessions confirmed the order, subject to the opinion of the court on the following case: *Thomas Wood*, the pauper's father, was settled at *Tesserton*, and on 22d April 1755, he and his family were removed from *Great Ryburgh* to *Tesserton*. By a certificate, dated 20th June 1755, *Tesserton* acknowledged that the said *Thomas Wood* and *Hannah* his wife, with their seven children by name, of whom *John* the pauper was one, were legally settled in *Tesserton* when they went and resided in *Great Ryburgh* under the certificate. The pauper lived with his father until he was 20 years of age, when he was hired to Mr. *Dade* of *Ryburgh* for a year, with whom he lived two years. The year following he lived with his father in *Great Ryburgh*, and worked as a labourer. He then hired again to Mr. *Dade* for a year, and served that year, and also the following year, in *Great Ryburgh*, when he again returned to his father and worked as a labourer for a year, and then married, and has lived in *Great Ryburgh* ever since, but never with his father since his marriage. The pauper's father died in *Great Ryburgh* about four or five years since. — L. *Kenyon* Ch. J. The decision of the sessions in this case is not contrary to that in R. v. *Darlington*. There it was held, that the certificate which was granted to the certified man extended to his wife and family, to all those who formed a part of the family of the *pater-familias*; but that when his son became the head of a new family and had children of his own, their residence in the certificated parish was not protected by it. But here the pauper is mentioned by name in the certificate itself, and he has never gained any settlement, or lived out of the certificated parish since it was given. Order of sessions confirmed. 5 T. R. 258. 2 Bott. 592. pl. 645.

H. 40 G. 3. R. v. *Batheaston*. Two justices removed *H. Gay* and wife and children from *Box* to *Batheaston*: on appeal the order was confirmed, subject to the opinion of the court on the following case: *Edward Gay*, the grandfather of the pauper, being settled at *Batheaston*, went to live in *Box*, under a certificate from *Batheaston*, dated October 21, 1727, certifying the said *Edward Gay*, *Deborah* his wife, and *Edward* and *Thomas* their children, to be parishioners of and legally settled in *Batheaston*. *Edward* the son named in the certificate, now 80 years of age, continued to live with his father in *Box* until his marriage. He was

But if the children he named in the certificate, it will extend to them after they become heads of families.

And where the party's child is named therein, his family is within the certificate.

tioned by name in
grandson is not with
that in the latter, w
they are emancipate
ficate, not as the gra
tioned in the certific
the son who is also
they thought that
govern the present
8 T. R. 448.

But if a child be
intentionally
left out of the
certificate, it
does not extend
to that child,
although he may
not have become
the head of a
family.

H. 37 G. 3. R. v
James Ceary and his
Patching in *Suffex*.
stated the following c
Ceary and his wife
years before were re
wife and the two you
ing, from whence he
a certificate, acknowle
children by name to
pauper, then about 14
the order of removal
officers of *Storrington*)
of the father before th
his own living they ha
pauper both before any
himself entirely be d:

as before, (paying him so much a week for lodging and board), until he married; that he continued to reside at *Storrington* until he was removed by the present order; and that he had not done any other act (other than as aforesaid) to gain a settlement in *Storrington*. — By L. Kenyon Ch. J. In deciding this case, I wish not to disturb any of the authorities which have been cited; but my opinion in this case proceeds upon its own particular circumstances. Consider the situation of this family; the father, mother, and two of the younger children, who had been resident at *Storrington*, were removed by an order of justices to *Patching*, who gave them a certificate, and they returned to *Storrington*. Now, before and at the time when this certificate was obtained, the pauper had worked as a day-labourer, and received his wages for his own use, had lodged in his father's house, and paid a weekly sum for that accommodation. The form of the certificate too is material, it was granted to the father, mother, and the *two younger children*; but the pauper was not included either in the order of removal, or in the certificate. If indeed he were under the disability of gaining a settlement by 9 & 10 W. 3. to be sure this is not one of the modes allowed by that act. But the question is, Whether he is to be considered as a certificated person? Generally speaking, *if a certificate be granted to the head of a family, it extends to all the members of that family*; but it is competent to the parties themselves to narrow the extent of a certificate; and the certificate in question seems to have been specially framed for the purpose of excluding the pauper from the operation of it: It is not conceived in general terms, but after mentioning the father and mother, it goes on to specify the two younger children, omitting the pauper, who was the eldest; and it is a known maxim *expressio unius est exclusio alterius*. Therefore, on the particular circumstances of this case, I am of opinion that the pauper was not resident at *Storrington* under the certificate, and consequently was not disabled from gaining a settlement there by hiring and service; but I desire to have it distinctly understood that I do not by this decision mean to shake the authority of any of the former cases. — *Grose J.* The question is, Whether the pauper's residence in *Storrington* were or were not protected by this certificate; for if it were not, he is now settled in that parish. A certificate protects only three classes of persons: those who are named in it; those who are part of the family of the certificated person when it is granted; and his children born in the certificated parish after that time. Now the pauper certainly does not come within either the first or the third class: nor was he part of his father's family, as far as respects the certificate;

And the parties themselves may narrow the extent of a certificate.



cond wife, after
her husband's
death, although
granted in the
life-time of the
first wife.

quashed the order, subject to the following case: In the year 1755, his wife came to reside at *10th August 1755*, from *Duffel* and *Mary* his wife. After which *Mary* died on the 14th April 1756. He continued to reside in *Duffel*, when he died, leaving *Mary*, who continued to reside in *Duffel* until *August 1791* took *Barb* a girl of the parish of *St. Mary*, regularly bound to her by indenture. The apprentice served her forwards of 40 days, when *Duffel* died.—This case has been differing in opinion ever since.—*L. Kenyon Ch. J.* and it is whether the apprentice was bound to *Hampton* by serving the wife of the certificated apprentice, or of opinion that she was not in service. It has been held in favour of those who were members of the family in the *Sherborne* case (a) it is after the death of the

person. In the case of *R. v. Darlington* (a), we said that the certificate only extended to those who constituted a part of the family of the person to whom it was given; and when the children of that person married and settled, and became the heads of other families, the families descending from them could not claim the protection of the certificate, because they were the members of a different family from that to which the certificate was given. But I think the case of *R. v. Sherborne* decides this: there a child, born after the giving the certificate, was held to be included in it, and consequently could not acquire a settlement in that parish by hiring and service: so here, the second wife was ingrafted into and formed a part of the family of the *pater-familias*, and no apprentice or servant could gain a settlement by serving her in that parish to which the certificate was given.—*Buller J.* (b) I confess this case strikes me in a different light from my Lord Ch. J. I think that the reasons given in *R. v. Darlington* decide this case, and prove that the pauper gained a settlement in *Hampton*. The certificate was originally granted to *J. Duffel* and his wife, who were named in it; she died, the husband then married another wife, who survived him; and under the second wife this pauper claims a settlement by apprenticeship. I agree with the proposition, according to *R. v. Sherborne*, that when the husband married the second wife she became a part of his family, and as such was protected by the certificate; and so she continued as long as she remained a part of his family. But I consider the certificate operating in favour of the man and his family, as long as any of the members of it remained part of his family; but when the husband died, the wife was no longer a part of his family, but might have been removed back to his parish. And consequently, any person serving with her there as an apprentice after that time might gain a settlement by such apprenticeship.—*Grose J.* gave his reasons at considerable length, agreeing in opinion with *L. Kenyon*. The order of sessions was quashed. 5 T. R. 266. 2. Bott. 593. pl. 646.

4. Of the Effect of Certificates.

T. 5 G. New Windsor v. White Waltham. The pauper being settled in *White Waltham*, where he had lived for two years with a woman who was reputed his wife, went with a certificate from *White Waltham* owning them as husband and wife into the parish of *New Windsor*, where they had six children. The man dies, and the woman swearing they

A certificate acknowledging the persons returned in it to be man and wife are concluded thereby, though it afterwards appear that they were not so; the woman swearing they had never been married.

(a) *Ante*, this head.

(b) *Ashhurst J.* was absent.

K k 2

had



&c. is conclusive of the fact of settlement though they were not married legally *R. B.* having a first wife still alive.

that *Mary* was not his law wife then living: Upon settlement of the real an *Mary* and her children; that they should be forced children. But by the court take care for whom the conclusive. The parish expressly acknowledged the inhabitant; and the parish bound to receive her. chargeable, the parish of for her and her children were deceived: But it was were so; and they deceived to suffer, and not *Headcon B. S. C. 253. 2 Bott. 57*

H. 13 G. 3. Toftock Edward Parkinson, others the body of *Elizabeth P* the parish of *Toftock*; settled in the parish of *W* was the putative father of the birth of the said child at *Toftock* to the said *Edu* after the said marriage, the said *Edward Jerman*

certificate was asked for ; and that there never was a case, where the certificate was held to be conclusive when obtained by fraud on the suppression of facts, but only where they have granted them by mistake ; for against mistake they might have been guarded. But it not appearing that the parish officers recommended to him to get a certificate for the son, nor that he to whom the certificate was granted desired the son to be included in it, the certificate was held, on the authority of the case of *Headcorn v. Maidstone*, to be conclusive. 2 Bott. 582. pl. 641. B. S. C. 737.

R. v. Ullesthorpe, H. 40 G. 3. was a case in which it was stated, that the mother of the pauper had married to a person who enlisted soon after as a soldier, and had not been heard of by her for 40 years, and was never seen again by her. That hearing he was dead, she married the pauper's father ; that the parish of *Earl Philton* gave a certificate to *Ullesthorpe* acknowledging the father, *Mary his wife*, and their family, to be their legally settled inhabitants. That the original husband came home after the second marriage. The removal was of the father, mother, and pauper, from *U.* to *E. P.* and the order was quashed by the sessions, which order of sessions was quashed by the court without opposition. *T. R.* 465. 2. Bott. 6014 pl. 650.

When the second marriage of the wife is not fraudulent or criminal, a certificate acknowledging the second husband and *M. his wife*, be conclusive, though the first husband return after the second marriage.

M. 20 G. 3. *Fringford v. Buckingham*. *Mary Swift* widow was removed from *Fringford* to *Buckingham* : The sessions confirmed the order, and stated specially, That the pauper and her father jointly purchased a house for 14l. or 16l. in the parish of *Buckingham* : each paying a part of the purchase money. That it was surrendered to the father during his life, with the remainder to the pauper in fee : That the father was admitted : That in the father's lifetime the pauper married *Robert Swift*, who was settled at *Fringford* : That after the father's death the pauper alone according to the custom of the manor was admitted, and she and her husband came to and resided upon the premises until his death : That on 14th June 1776, *Fringford* granted a certificate to the pauper, which was delivered to her and kept in her possession, and not delivered to *Buckingham* till after the removal : That the pauper, after the granting the certificate, and before the removal, resided upon the premises upwards of 40 days.—Upon hearing the appeal, the certificate was offered as conclusive evidence against *Fringford*, so as to prevent their setting up any settlement obtained in *Buckingham*, previous to the granting thereof. But the court were of opinion, that the certificate under these circumstances did not prevent the pauper gaining a settlement at *Buckingham* by such estate and residence, and

A certificate is conclusive between the parish certifying and the parish to which it is granted, although not delivered till after the removal.



original pa-
rishes.

When a ques-
tion arises be-
tween the ori-
ginally certify-
ing parishes and
a third parish the
certifying parish
may inquire in-
to the truth of
facts stated in
that certificate.

The following case: The pa-
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Two years afterwards he
condemned, but reprieve
went abroad, and five ye
that he was dead) was n
ham. About a twelvemonth
the said *Ponton* and *E.*
Thredlingworth as man
Lubbenham for a certifica
one accordingly; acknow
wife (without mentionin
settled in *Lubbenham*, an
dingworth. *Ponton* was
but the said *Elizabeth*.
cohabitation at *Lubben*.
daughter of the said *J. .*
Kenyon Ch. J. In the t
effect of the certificate
second marriage was voi
ment of the pauper *I*
husband was settled. E
contracted a marriage d
ment was at *Lubbenha*
husband applied to *Lui*
dingworth, which was ac

into their parish; but there is no necessity for extending the estoppel any further. In all the cases, except that of *Honiton v. St. Mary Axe*, the question arose between the parish granting the certificate and the parish to which it was given. That is the only case which extends the doctrine farther; and there it is said that a certificate is conclusive on the parish granting it as to all the world. But the reason given by L. Ch. J. *Parker*, "That as all other parishes are bound to receive the pauper, so the parish that certifies is concluded as to all other parishes," is not true; for other parishes are not bound to receive the pauper; there must be a particular parish in contemplation at the time of granting the certificate. Therefore as the reason on which that case was decided fails, we are delivered from the authority of it. Then what reason is there why the truth of the case should not be enquired into? No injury is thereby done to the third parish; no imposition is practised upon them; neither is there any hardship in it. It would indeed be a hardship on *Threddingworth* parish, who acted on the faith of the certificate, and who were bound to receive the parties mentioned in it, if the certificate were not conclusive in their favour against *Lubbenham*: but that reason does not extend to this parish. Therefore on that ground, and on the principle that estoppels are not to be favoured, the parish of *Lubbenham* ought not to be precluded from enquiring into the truth of the case: and according to the truth of the case it appears, that the pauper *Elizabeth* was settled at the place of her first husband's settlement. I am therefore of opinion, that the order of sessions, as far as it respects the wife, should be quashed; but affirmed as to the child, because the fair conclusion from all the facts stated is, that she was a bastard. *Aspburst, Buller, and Grose, J.* delivered their opinions to the same effect.—Order of sessions quashed as to the mother, and affirmed as to the child. 4. T. R. 251. 2 Bott. 584. pl. 643.

Harrison v. Lewis. A certificate promising to receive the persons whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for though it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. 3 Salk. 253. 2 Bott. 576. pl. 630.

M. 14 G. 2. *Petham v. Dymchurch.* The pauper was bound apprentice to a certificate-man in *Tenterden*, and after living with him there two years, was by him assigned over to a parishioner of *Lidd*, with whom he inhabited and served for the remainder of the seven years. And the court were all of opinion, that such assignment being good as to the purpose of a settlement, the apprentice gained a settle-

A certificate is not binding against a subsequent settlement.

A certificate is not restrictive from gaining a settlement in a third parish; and therefore the apprentice to a certificated man being assigned to one in another
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parish but the certificate to *Wincanton*. 11
certificated one. in *Wincanton*, and at t

the parish of *Silton* app
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Whether the son of a c
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gained a settlement at
pl. 61.

So also in the
case of hiring
and service in
a third parish.

T. 28 G. 2. Horsley
certificate to *Abraham* (it to *Hollingsclough*, wh
The pauper at twelve y
hired and served for a
Hollingsclough. The q
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And the court were cle
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Buerley, John Thackrey the pauper was bound to him as an apprentice by indenture, and served his apprenticeship with his said master, who all the time inhabited in his said house in the township of *Dacre cum Buerley*. The question was, Whether he gained a settlement in *Dacre* by such apprenticeship? It was argued on the one side that he could not; for his master himself in that case resided under the certificate which he brought with him when he came from *Bishopside*, and consequently the apprentice could not gain a settlement with him at *Dacre*. Unto which it was answered, that the master did not reside as a certificate-person at *Dacre*, because living upon his own estate there, he needed not to have delivered any certificate, and the certificate which he did deliver could have no effect at *Dacre*, as it had before been delivered to *Bishopside*, which they ought to have kept for their own protection; and if a certificate had been necessary, he ought to have produced another certificate. And of this opinion was the court, and held that the apprentice gained a settlement at *Dacre*. *B. S. C. 381. 2 Bott. 580. pl. 638.*

In *E. 29 G. 2. St. Peter's in Nottingham v. Wilford*, the same point was determined.

5. Of the continuance of certificates.

H. 5 G. 3. Spotland v. Castleton. The pauper *John Hammer* was bound apprentice to a certificate man at *Castleton*, and served his master at *Castleton* for some years. Then he removed with his master to *Spotland*, where he served him 40 days and upwards, and then was married to a young woman whose parents lived at *Castleton*; and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the day-time with his master in *Spotland*, but went and lodged with his wife at her parents' house at *Castleton*. By the court: The master, who was a certificate man at *Castleton*, gained no new settlement in *Spotland*; and the pauper still remained an apprentice to this certificate man. The master may still go back to *Castleton*, the parish to which he was certificated. Indeed, it hath been determined, that if a certificate person goes to another parish, and becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate, then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force: the certificate subsists; and the apprentice remains part of his master's family. He was so at *Spotland*; and all along continued to be so. The certificate act says, that the apprentice shall not gain a settlement in the parish to which his master came

Where a certificated man takes an apprentice, and then goes with him to another parish, and the apprentice resides there 40 days as an apprentice, the apprentice gains a settlement there.

A voluntary removal to a third parish, is not of itself a desertion of the certificate.



...this hiring and service she
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adjudged (the point being
served an apprenticeship it
quite clear of the certifica-
liberty to gain a new set-
tified person could be.

And the like was adjudg-
of *Keynsham v. Hanham*.

See *Bedworth v. Keel*, (1

Also by an estate
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man by descent,
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40 days.

Although the statute of
son who shall come into a
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he shall really and *bona fide*
2-year, or execute some a-
hath always been holden,
from his own, whether it be
purchase; and continuing t-
by gain a settlement, pro-
the consideration *bona fide*;

Also by a re-
moval by order
of justices.

H. 28 G. 2. Sudbury v.
settled at *Sudbury*, came by
dren to *Uttoxeter*. *Thomas*
children remaining at *Uttox*
chargeable, and were remo-
about a year after, *John Bla*
bound, according to the

far from looking upon a certificate as continuing after an order of removal, that the pauper cannot return to the place from which he was removed, without incurring a penalty. And it was adjudged that the pauper gained a settlement at *Uttoxeter*. *B. S. C. 373. 2 Bott. 602. pl. 651.*

T. 29 & 30 G. 2. Taunton St. Mary Magdalen v. Taunton St. James's. *Robert Bagg*, the grandfather of the pauper, came with a certificate from *Taunton St. James's*, to *Taunton St. Mary Magdalen's*. Afterwards he went back into the parish of *Taunton St. James's*, and there had *Robert* his son, the father of the present pauper. And afterwards *Robert* the pauper's father, married in *Taunton St. James's*, and went and lived with his wife and family, in a house in the said parish of *Taunton St. James's*, apart from his father; and had issue *Robert* the pauper, born in *Taunton St. James's*. *Robert* the grandfather died in *Taunton St. James's*. Then *Robert* the father died. And *Robert* the pauper was bound an apprentice by the parish of *Taunton St. James's*, into the parish of *Taunton St. Mary Magdalen*: and there served his apprenticeship. It was urged, that by virtue of the certificate given with his grandfather to the said parish of *Taunton St. Mary Magdalen*, the said apprentice gained no settlement in *Taunton St. Mary Magdalen*, but continued settled in the parish of *Taunton St. James's*, which had given the certificate. But the court (without going into the question whether the certificate act extends to grandchildren, or whether the son of this certificate man was emancipated from his father's family or not, as these points were not necessary to be discussed in this case) delivered their opinion, that the certificate itself was of no force at the time of the grandson's being put apprentice in *Taunton St. Mary Magdalen's*, but was then totally at an end. For in so long a course of time, which was 54 years after granting the certificate, and after such a desertion, it was reasonable to conclude that there was an end of it. It was absolutely waved and deserted. And the father and grandfather of this pauper could not have gone to *St. Mary Magdalen's* again without a new certificate. It is a good deal like the above case of *Uttoxeter*, where the certificate was considered as *functus officio*, and as if it had never at all existed; being in that case totally at an end, as being satisfied, and having had its full and whole effect, by the removal of the paupers (under an order of justices indeed) to the parish who had given that certificate. And in the present case, the certificate being at an end, the apprenticeship of *Robert Bagg* the pauper will have just the same effect as if no such certificate had ever been given at all, or were any ingredient in the case; that is to say, the apprentice is settled *Taunton St. Mary*

So, where a certificated person returns to the certifying parish, and has a son who marries and lives there, and who has also a son who is apprenticed into the originally certificated parish, and serves his apprenticeship there, the certificate was at an end when the grandson was put apprentice, and of course the apprentice gained a settlement in the certificated parish.

Magdalen's.



in the certificated parish, and there marry and have a family, that family is not within the certificate.

... were by him (this was) of the effects, and remain being taken ill, he was recommended to *Gloucester* infirmary he went to *Frampton* to take *Samuel* the son was hired to *Frampton*, and so continue father died. *Samuel* after and his wife and child were from *Frampton* to *Trethorpe* removal, the counsel observed the circumstances were very length of time during which considered as a waiver of the law of that case: It had been cases (as in that of *Spotland*) certificated person from a certificated, will not vacate a regard to any interval or loss by length of time, desertion line of limitation to be drawn the parish will not do, will years? By analogy to the first at least ought to be required did not look upon the case recommended the father considering him still as their

And the order of the two justices was quashed, and the order of the sessions quashing that order affirmed. *Douglas*, 402. 2 *Bott.* 604. *pl.* 654.

Cald. 77. S. C. by the name of *R. v. Inhabitants of Frampton upon Severne.*

H. 22 G. 3. *Bedworth v. Keel.* *Jane Peak* was removed from *Bedworth* to *Keel*; the sessions confirmed the order, and stated specially: That the pauper was born at *Bedworth*, where her father and mother resided under a certificate until their death; that she remained there after their death until she was about seven years of age, with her brother who was named in the certificate, and then voluntarily went to *Keel*, where she remained till she was 14 years of age, during which time she was maintained by *Keel*, and then she was hired for a year, and served the same, and also two or three others in *Keel*, when she voluntarily returned to her brother's house at *Bedworth*, and was afterwards hired to a person for a year at *Bedworth*. The question was, Whether the pauper, after she returned to *Bedworth*, was to be considered as still under the certificate, or that under these circumstances, it was to be considered as having been abandoned? — *L. Mansfield* at first inclined to think that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate. But *Willes J.* thought that the inquiry here must be, Whether the certificate was *functus officio*? The fact is, that the pauper returned voluntarily to the house in which she had before resided under the certificate, which belonged to her brother, who was at that time resident there under the certificate: It certainly was not discharged as to him, and there do not appear to me to be circumstances in the case sufficient to warrant us in saying, that it was so with respect to the pauper. — *L. Mansfield.* I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me. Both orders affirmed. *Cald.* 144. 2 *Bott.* 605. *pl.* 655.

If a certificated person go to a third parish, and there be hired to different persons for a year respectively, and serve accordingly, and then return to her brother, who is still residing under the certificate, it is no desertion of the certificate.

T. 26 G. 3. *Newington v. Mersham.* *John Small* and his wife and five children were removed from *Newington* to *Mersham*: the sessions quashed the order, and stated the following case: That the pauper's father resided at *Newington* under a certificate from *Mersham* when the pauper was born.: That the father removed with his whole family to *Hoo*, and stayed there two years; and from thence also removed with his whole family to *Strood*, where he continued about four years, when he died: That about two years after the death of the father, his widow went to *Newington* to keep her uncle's house, with whom she continued until his death, and after-

Whenever a certificated person leaves the certificated parish, without any intention of returning, the certificate is at an end.

wards



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whenever a pauper *return*
should require from him
affirmed. 1 T. R. 354.

A temporary
removal, is
where a person
goes from the
certificated pa-
rish elsewhere on
a visit, or on
occasional busi-
ness, leaving his
family behind
him in that pa-
rish as his do-
micle.

In *R. v. St. Michael's*,
tificated man left the
his own parish, together
a house, and resided there
the pauper was born; a
family returned to the co
turned to his own parish,
And the question was, V
certificate? Lord *Kenyon*
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permanently at an end,
He said that he understoc

his permanent residence, he considered the certificate to have been discharged. The other justices agreed. 5 *T. R.* 526. 2 *Bott.* 612. *pl.* 661.

M. G. 3. R. v. Ingworth. An order of justices by which *S. Slaughter* his wife and two children were removed from *Ingworth* to *Erpingham*, was on appeal quashed by the sessions, who reserved the following case: In 1781, the father of *S. Slaughter* the pauper, went with his wife and the pauper, as part of his family, to reside in the parish of *Ingworth*, under a certificate from that of *Erpingham*. In 1787 the pauper, then 16 years old, let himself to *J. Brett-ingham* of *Erpingham*, and served two years as a yearly servant. He then let himself to *W. Clarke* of *Erpingham*, and served him as a yearly servant for a year. He afterwards let himself from three days after *Michaelmas* following to *M. Kemp* of *Brickling*, farmer, and completed his service. At the expiration of the year he returned to *Ingworth*, where his father still resided under the certificate, and lived in his father's house about a month, during which time he worked as a day labourer at *Brickling*, and paid his father for his board. When he returned to *Ingworth*, he did not consider himself as going with a view to a certificate. At the expiration of the month he let himself for a year to *B. N.* of *Ingworth*, and lived in his service two years. — *L. Kenyon* Ch. J. Although the distinctions in some of the cases on settlements are very nice, whenever we find a case precisely similar to the case in question, we ought to be governed by it. Now, it appears to me that the case of *R. v. Keel* [*ante*] is exactly like the present: there indeed *L. Mansfield* at first doubted whether or not the pauper returned to the certificated parish under the certificate; but afterwards he was of opinion that the pauper had returned under the faith of the certificate. If the pauper in this case had gained a settlement in a third parish, the reasoning in support of this order could have applied; but here is no ground for presuming as in *R. v. Newington* [*ante*] that the parties had abandoned this certificate; for the pauper's father was resident at *Ingworth* under the certificate when the son returned to him. *Le Blanc* J. mentioned *R. v. Collingbourn Du is* (a), the principle of which, he said, applied to the present case. 8 *T. R.* 339. 2 *Bott.* 616. *pl.* 664.

If the son of a certificated person leave him and go to the certificating parish, and there hire himself to and serve several persons, but gain no settlement there, and then return to the certificated person, it is no desertion of the certificate.

6. Of removing certificated persons.

In the case of *Martlesham v. Framlingham*. *T. 13 G. 3.* No more of a certified family it came to be debated, whether any more of a certified

(a) Title Settlement by Parentage.

family

Pauper. (Settlement.) [SECT. XVI. (6.)]

ily could be removed back, than the individual that asked f: the cause went off upon another circumstance. —

Mr. J. *Aston*, in giving his opinion, said, that if several ons reside in a parish under the same certificate, the asking f by a single one of them would not render the rest oveable. The certificate act says, that the parish who s the certificate shall receive and provide for the person tioned in it, together with his family, whenever he or shall happen to become chargeable or ask relief: and , and not before, it shall be lawful for any such person, his or her children, to be removed to the parish from nce such certificate was brought. And it must be dged by the justices, that such person is actually become geable, before they can legally make an order of re- al. Now how can the justices be authorized to make an adjudication upon a person who in fact is not become geable, nor ever has asked relief? *B. S. C. 748. 2 Bott. pl. 591.*

L. 29 G. 3. R. v. St. Mary Westport. Thomas Pretty and wife, and Elizabeth and James their children, were re- ed from Bradferd to St. Mary's, Westport, in Malmes- , both in Wiltshire: On appeal the order was confirmed, ect to the opinion of the court on the following case: vard Pretty, the grandfather of the pauper Thomas Pretty, ther with his wife and family, went to reside in Brad-

Ch. J. Although this certificate is not in the usual form, yet as far as it relates to the question now before us, it must be considered as a common certificate. And the single question is, whether these persons who have been removed can, in the fair sense of the words, be said to have been actually chargeable to *Bradford*? Now it is negatived by the case that any of these parties received relief in person. But it is contended that they were *virtually* relieved, because the son and the grandson both received relief. But it must be observed that at that time they were not members of the family of the *pater-familias* now removed; they lived apart from him, and formed another family of themselves. Then it has been said, that a burthen has been thrown upon the parish by the relief of the son and grandson, and therefore that the grandfather was *virtually* chargeable, because the 43 *Eliz.* requires fathers and grandfathers to support their children and grandchildren. But that proposition hastens to a conclusion too soon; for by that statute they are not *in all events* to maintain their childchildren, &c. but only when they are of sufficient ability: now the justices are the proper judges of that ability; and the grandfathers, &c. are only to be called upon by an order of justices. There is another section in the certificate act which throws some light upon this subject; that directs that every person who receives relief, and the wife and children of such person cohabiting in the same house, shall wear a badge on the shoulder; this therefore is a strong legislative interpretation of what is meant by the word "family" in that act, and it would be a very harsh construction of that law to say that the grandfather, when his son and grandson who lived in a different house from him received relief, could have been badged, or, as mentioned in the latter part of the same clause, sent to the workhouse. So that, on the fair construction of this act of parliament, none of the persons removed by this order can be said to have been chargeable. And even if we could exercise any discretion upon the subject, we should not be inclined to restrain the operation of the certificate act. The case of *Walton v. Spark* (which has been cited) is very distinguishable from the present: there the condition of the bond, which was to indemnify the parish against the person therein named and his children, was broken. Then as to the circumstance of the daughter being with child; it is universally settled that that is not a sufficient ground for the removal of a certificate-person. Perhaps it is rather a hard case, and we might wish the law to be otherwise in some instances. But indeed it is to be considered that, though the woman was pregnant, *non constat* that the child would be a bastard; and though it was probable, yet it was not certain, that any burthen would have

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on the parish, for she might have been married. — *Asbury J.* No doubt of the particularity of this certificate; for the parishing parish to receive the paupers when hereto requested, can only be taken to mean, would be *legally requested*. Now the persons mentioned in the certificate had a right to reside in *Bradford* until they became chargeable, when only the certifying parish could legally be requested to receive them. Then the question is, whether or not any of the persons removed were chargeable in such a way as to warrant the *Bradford* in removing them? Now it does not appear that any of them fall within that description. For instance, in the case of the daughter, it has been repeatedly decided that a certificate-person cannot be removed as being chargeable, but such person must be *actual* chargeable, and in such an instance as this the charge incurred by marriage. Then as to the relief which was given to the son and grandson, it seems to me that that was a sufficient ground to remove the grandfather and to place him under a separate establishment. But it has been decided that the grandfather was bound to maintain his son and grandson, that is true under circumstances; but then the son and grandson were of sufficient ability, and called upon by the law, here the relief was not given on the application.

in fact chargeable, unless we can say that they were so in law. Although this question has never been expressly decided, I agree with the opinion delivered by Mr. J. *Aston*, who was particularly conversant with this branch of the law. And notwithstanding it was extrajudicial, I cannot help paying a great respect to the opinion of so able a judge. If the whole of a certified family were removeable because one of them only became actually chargeable, it would be attended with great inconvenience. As for instance, if there were three or four young men in the family who were able by their industry to procure a competent maintenance, and their sister became chargeable; it would be against the spirit of the act to make that a ground for removing them all. And I think the intent of the act will be fully answered by determining that when any one of the certificated family becomes chargeable, he only shall be removed: any other determination would defeat the true purposes of the act. Then as to the pregnancy of the daughter, no case has been cited to shew that a person under such circumstances can be removed; and I think she was not removable on that account. Both orders quashed. 3 T. R. 44. 2 Bott. 542. pl. 594.

7. *Of apprenticeship under certificates.*

E. 9 G. 3. Romsey v. St. Michael's, Southampton. Saul *Bishop* was bound an apprentice to *William Kearley* of *All Saints* for four years; and served him there for three years. It was then agreed between them and one *Samuel Dagnell*, residing in *Romsey* under a certificate from *St. Giles's* in *Reading*, that *Bishop* should work with *Dagnell* the remainder of his apprenticeship; for which, *Kearley* was to receive 2s. a-week. *Bishop* accordingly served him, and resided with him in *Romsey*. The question was, Whether the apprentice gained a settlement by this service in *Romsey*? — By *L. Mansfield*: This question is plainer than any argument can make it. The end and intention of the act was, to prevent certificate persons from bringing a charge upon the parishes into which they came by certificate. How then can it be imagined, that another man's apprentice should gain a settlement by serving him in that parish, when his own apprentice is made incapable of doing so? And the court were unanimously of opinion, that the apprentice gained no settlement in *Romsey*. B. S. C. 640. 2 Bott. 435. pl. 503.

Apprentice of an uncertified man serving a certificate man, can gain no settlement thereby in the certificated man's parish where the service is performed.

R. v. Hardwick, M. 50 G. 3. An appeal against an order for removal of *Joseph Vipond*, *Mary* his wife, and their children, by name, was entered at the sessions in the name of “The churchwardens and overseers of the poor of the parish

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Hardwicke, in the county of *Norfolk*, appellant
 chwardens and overseers of the poor of the
 am, *St. Mary the Virgin*, in the same county
 s." The sessions confirmed the order, and sta
 V. the father of *Joseph* was a settled inhabitant
St. Mary in *Norfolk*, and about 40 years age
 e in *Hardwick*, in that county, on a tenement a
 . 10s. per annum. The pauper *Joseph* was bo
 h, and at the age of 15, his father then resid
 tenement, was apprenticed to *S. W.* of *Besthorpe*
 cordwainer, and regularly served his time
 er, who resided in *Besthorpe* under a certifi
 well parish, in *Norfolk*. — During the first ye
 apprenticeship, *John Vipond* the father, purc
 ment on which he resided at *Hardwick*, for 8
 his apprenticeship he was clothed by his father
 sionally visited him. At the expiration of th
 hip, the pauper being then 19 years of age, re
 father's house in *Hardwick*, where he staid
 received some new clothes: he then went ba
 er master, and engaged to work with him by
 did so work at *Besthorpe* for a year and a quar
 ndents in order to prove the settlement of the
Hardwick called the father, who being a settled (ar

after his apprenticeship as to his home ; he treated it as his home, and was received and treated as one of his father's family. When he returned there he was in the same plight as when he left it. His father continued clothed with all his rights over him, and he betook himself to his father's house with all the rights belonging to a member of his father's family.—Lord *Ellenborough* Ch. J. After observing that the sessions, from the fact of occupation for 25 years, within the knowledge of the son, without payment of rent for a great part of the time, and the fact that 40 years ago the estate was rented at 5l. 10s. *per annum*, and was at the time of appeal worth 10l. *per annum*, might have drawn the inference that the father had purchased it before the son came of age for above 38l. (the pauper at the time of appeal was 37 years old.)—He then said that all appeals against orders of removal, were in effect the suits of the parishioners themselves, who are to contribute to the maintenance of paupers. That a parishioner therefore being a party, cannot be called upon as a witness. Then what is there to differ this from other cases of aggregate bodies, who are parties to a suit.—In general cases, the declarations of parties to a suit, are evidence against them ; and how is this case distinguishable from those upon principle ? What credit is due to such evidence, is another consideration : his declaration does not conclude the parish, but will be more or less weighty according to his means of knowledge, the genuineness of the declaration, and other circumstances of which the court would judge.—The evidence was competent to be received.—And, as to the point of emancipation, he said that the son must be considered as having been re-incorporated in his father's family, having returned and required and received his father's assistance, and therefore he followed his father's settlement ; and he said that none of the cases of emancipation, which had been decided on the ground of the children's marriage, or obtaining a settlement of their own in another parish, or being under a different control, incompatible with that of their parents, applied to this case. The other judges, *Le Blanc* and *Bayley*, (*Grose J.* being absent) agreed. 11 E. R. 578.

T. 31 G. 3. R. v. *Hinckley*. The pauper *J. Furberough* was born at *Frowlesworth*, where his father was settled, and at nine years old was bound a parish apprentice to *D. Palmer* of *Hinckley*, who was residing there under a certificate from *Copson*. The pauper, after serving part of his time with *Palmer*, was assigned by him to *J. Hurst*, a legal parishioner of *Hinckley*, under an agreement that *Hurst* was to pay 1s. a-week to *Palmer*, and which was paid accordingly. He

Apprentice to certificate man serving an uncertified man in the same parish

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and *Hurst* in *Hinckley* above 40 days before he left him. Sessions being of opinion that he gained a settlement by being *Hurst* under the assignment, confirmed the order by which he and his wife were removed from *Froxolefworth* to *Hinckley*.—The court took time to consider; when *L. Kenyon* J. delivered their unanimous opinion: The question in case is, Whether any settlement was obtained by the apprentice by his service under his second master, who was a son of *Hinckley*, in that parish, his first master, by whom he was assigned, having been certified thereto? The impression made upon my mind was, that as the last 40 days of the apprenticeship were served under a person who was not under the disability of the certificate, such service did not create a settlement: but upon looking more fully into the authorities cited, on which I had formed my first opinion, and paying more particularly to the words of the statute of *Anne*, I disposed to think that a settlement was not acquired by service under the indenture of the second master in *Hinckley*, although he were not residing there under the certificate. That opinion which we have formed proceeds principally on the words of the statute of *Anne*, and the view with which it was passed. By the general tenor of the certificate act, persons settled in one parish, bringing a certificate with them to another, have a right to remain there until they become chargeable; and the parish to which such certificate is granted

at *Lidd*, which was a third parish; that does not govern the present; because it does not interfere with the policy of the statute of *Anne*: for the parish of *Lidd* had not received the original master by force of the certificate, and therefore had no right to avail themselves of the provisions of that statute, which was intended for the protection of the certificated parish. But here the words of the statute cover *Hinckley* in the broadest manner, to prevent any burthen coming on that parish on account of their obligation to receive the certificated person. The other case principally relied on (*viz.*) the last case of *Romsey* parish, has no application to the present question; for though it was contended generally at the bar, that the statute of *Anne* was confined to apprentices bound by indentures to certificated masters, and claiming settlements by serving under such original masters, yet the court by no means adopted that argument, but decided rather on the ground that no settlement could be gained by the apprentice through the medium of a certificated person in that parish. Therefore as there has been heretofore no determination on this point; as the statute of *Anne* was passed for the express protection of the certified parish; and as the words of the act are very particular and positive in favour of that parish, we see no reason to restrain the meaning of them to a service with the original master. Both orders quashed. 4 T. R. 371. 2 Bott. 437. pl. 506.

E. 26 G. 4. St. Peter in the borough of Derby v. Chad-desden. Two justices removed *Benjamin Pratt*, and his wife and four children, from *St. Peter Derby* to *Chad-desden*: the sessions quashed the order, and stated the following case:— That *Pratt* the pauper, on the 5th November 1751, was bound an apprentice for seven years to *Joseph Pinn* of *All Saints*, in *Derby*, to which place *Pinn* had a certificate from the parish of *Smalley*; the pauper served his master in *All Saints* about five years and a half: And the master and his family at *Lady-day* 1757 removed to *Chad-desden*, where he resided till 14th January 1758, when *Smalley* granted *Pinn* the master a certificate. Between *Lady day* 1757, and 14th January 1758, the pauper served his master upwards of 40 days in *Chad-desden*. *Pinn* never returned to *All Saints*, but continued at *Chad-desden* under the certificate: But the pauper returned to *All Saints* in the summer of 1758, and served his master there upwards of 40 days after *Smalley* had granted the certificate to *Chad-desden*. The sessions were of opinion that the pauper gained a settlement by such last service in *All Saints*.— The only question was, Whether the second certificate to *Chad-desden* discharged the former one to *All Saints*, they having both been given by *Smalley*?— The court being of opinion

Apprentice to a man at A. who had a certificate from the parish of B. and who afterwards removed to C. and there had another certificate from B., if he go with him to C. and afterwards return alone to A. and serve his master there, will gain a settlement there.

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this question was determined by *R. v. Bridham*, H. 7. 3. discharged the rule. Order of sessions affirmed. *R.* 218. 2 *Bott.* 437. *pl.* 505.

1. 32 G. 2. *St. Cutbbert's v. Westbury*. A person settled at *Cuthbert's* was bound apprentice to a man residing at *Westbury*, but whose settlement was at *Harptree*, a neighbouring parish. After the apprentice had served 22 days, his master obtained a certificate from *Harptree*, and delivered it to the overseers at *Westbury*; and the apprentice served there subsequently with his master for three years. The question was, whether the apprentice hereby gained a settlement at *Westbury*?—By the court: Before the act, the serving under an apprenticeship to a certificate-man for 40 days in the parish where the master lived, would have gained a settlement to the apprentice. But the act says, that if any person shall be bound apprentice by indenture to any person *residing under a certificate*, he shall not thereby gain a settlement. Now here the service for 40 days, under an apprenticeship to a master who did not reside in this parish under a certificate; therefore the apprentice in this parish did not gain a settlement; it would have been otherwise if he had served 40 days before his master became certificated. *B. S. C.* 470. 2 *Bott.* *pl.* 501.

1. 33 G. 3. *R. v. Wensley*. The pauper being legally settled at *Wensley*, was bound apprentice to *R. Hallam* of *Chef-*

is nothing in this statute to shew that the words commented upon should be construed to be directory only. The statute says expressly, that "if any person who shall come into any parish, &c. shall at the same time, procure, bring, and deliver to the churchwardens, &c. of the parish where such person shall come to inhabit, a certificate," &c.; the act therefore requires a delivery at the time when the pauper goes into the certificated parish; and it is essential to the interest of that parish that it should be delivered, as the withholding it from them for a time may be the means of introducing frauds. The case cited (*a*) only decided that a certificate, though not delivered, was an acknowledgment by the parish granting it that the pauper was settled with them when it was given, but did not determine that it prevented the pauper gaining a settlement in the certificated parish after it was granted. Both orders quashed. 5 T. R. 154. 2 Bott.

439. pl. 507.

E. 33 G. 3. R. v. Hampton. It was also decided, that an apprentice taken by the second wife after the death of her husband, who had resided under a certificate, could not acquire any settlement by service under the indentures, because she, and, of course, the apprentice, were residing under the certificate.

So also to the apprentice of the widow.

So also in *R. v. Hinckley, T. 41 G. 3.* it was holden that a certificate extended to an apprentice, who being originally apprenticed to a certificated person, was by him assigned over to a legal parishioner of the certificated parish; and that such an apprentice could of course not gain a settlement by such service. 4 T. R. 371. 2 Bott 437. pl. 506.

So to certificated man's apprentice, assigned to an uncertificated person.

R. v. Mortlake, E. 45 G. 3. Removal of *Mary Dormer* and her several children by name, from *Mortlake* to *Great Marlow*, and quashed by the sessions. — *John Dormer* and *Ann* his wife, being legally settled in *Hambleton*, went with a regular certificate from *Hambleton* to *Great Marlow*, and during their residence at *G. M.* had a son born there named *William*. *John* and *William* died there, without having gained any settlement in that parish. *William Dormer* left his father's family, married and occupied a separate house at *Great Marlow*, and had a legitimate son named *Thomas*, who in 1760, being several years after the death of *John* and *Ann*, was regularly bound apprentice to his father *William* by indenture for 7 years, and served his apprenticeship under the same at *Great Marlow*. *Thomas Dormer* was afterwards married, and had a son named *Thomas*, now deceased, who was the husband of the pauper *Mary Dormer*, and the father of the 4 children removed with her by the order appealed

Persons who come into a parish under a certificate must also reside there under it, for the purpose of being within the operation of it.

(a) *R. v. Buckingham.*

against.

Door. (*Settlement.*) [Sect. XVI. (7.)]

1811. The question was, Whether under the apprenticeship of *T. D.* the elder to his father *W. D.*, and the 12 *Ann.* 3. *T. D.* the elder had gained a settlement in *G. M.* *D.* the younger having gained no settlement, and the persons having no other settlement, than a derivative one over the said *T. D.* the elder? — In support of the order of the House it was admitted that *William* the grandfather of the petitioner, and son of *John* who originally came into *G. M.* by the certificate, was emancipated by marrying and living separately from him: but it was said that nevertheless *William* continued to reside under the certificate. — That a certificate extends to the children of the certificated person, (*R. v. Osborne, R. v. Alfreton, &c. &c.*). That by the 12 *Ann.* c. 18. s. 2. “if any person whatsoever who shall be an apprentice bound by indenture to any person whatsoever who did come into or shall reside in by means or license of such certificate, and not afterwards having gained a legal settlement (9 & 10 *W.* 3. c. 11.) in such parish; such apprentice by virtue of such apprenticeship, &c. shall not gain any settlement in such parish,” &c. That this extends as well to the party who comes into a parish by means of a certificate, as to all such as reside in it by means of such certificate. That though after emancipation *William* the son, might be said not to have resided under the certificate, yet he came into the parish by means of it. In *R. v. Alfreton*

it in *R. v. Darlington*, those who form his fire-side. That character cannot apply to *William* after he had married and left his father's house, and had become a new *sirps*, having a family of his own. *R. v. Hampton* was decided upon the ground that the second wife continued after her husband's death to be the root and remains of the old family, and not a substantive distinct family, as here. She still continued as the representative of her deceased husband; but here the son had started for himself at the head of a new family for marrying and taking a separate house for himself. He was then in a condition to gain a settlement for himself in the certificated parish. But the words of the statute of *Anne* are relied on, to shew that he is not such a person with whom an apprentice bound to him could gain a settlement there, and it is said that they are in the *disjunctive*, "come into or" "reside in:" but upon referring to the certificate act, the 8 & 9 W. 3. c. 30. which speaks of persons who "shall come" "into any parish there to inhabit AND reside," and the 9 & 10 W. 3. c. 11. which speaks of doubts having arisen upon the former statute, by what acts any person coming to inhabit or reside within any parish by virtue of any such certificate, may procure a settlement, and which enacts that no person who shall come into any parish (without more) by any such certificate, shall gain any settlement there, except in certain ways mentioned; I say, upon comparing the words of the statute of *Anne* with the former provisions, I think those words must be read *copulatively*, and that they mean only to designate persons who may come into any parish for the purpose of residing, and actually reside there under a certificate. The other judges agreed, and the order of sessions was quashed. 6 E. R. 397.

Sect. XVII. Of Settlement by relief.

R. v. Chadderton. M. 42 G. 3. Removal of *John Buckley*, his wife and five children by name, from *Little Bolton* to *Chadderton*, and confirmed by the sessions.—On the part of the respondents it was proved that the pauper *John Buckley*, when he buried his first wife, applied to and received relief from the overseers of *Chadderton*, and that the pauper's mother, being with child of a bastard some few years after his father's death, went from another township to *Chadderton* to lie in there, and "as the pauper had heard from his "mother," who has been dead some years, she was relieved there by *Chadderton*. This hearsay evidence was objected to by *Chadderton*, but received, and the remorants gave no

The bare fact of receiving relief while in a parish is no proof of settlement in that parish.

other

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er evidence of a settlement in *Chadderton*. The sessions receiving the above sufficient evidence of a settlement in *C.* directed the appellants to go into their case, and they proved that when the pauper was about 12 years of age, his mother and stepfather made a verbal agreement with *James Platt* of *Great Bolton*, cotton-weaver, that the pauper, who was then unable to weave a little, should weave for him three years. The father and mother were to have half the earnings of his weaving, and *Platt* the other half. *Platt* was to teach him to weave and find him looms, but the stepfather and mother were to find him in every thing else. He served out the three years with *Platt*, during which time he slept in *Great Bolton*. On Sundays he passed with his mother, and the rest of his time at *Platt's*, but this was not mentioned in the agreement.—Lord *Kenyon* Ch. J. said, that whatever doubt might be raised as to the settlement in *Great Bolton*, concerning which he thought the sessions should have found the fact one way or other, whether the pauper contracted to serve as apprentice, or only as a hired servant; yet at any rate the facts could not be supported, there being no evidence of a settlement in *C.* the bare fact of the pauper's having been relieved there being no proof of it, as they might have been relieved as casual poor.—It was then observed in support of the orders, that the fact of the pauper's having received relief from the overseers of *C.* was at least *prima facie* evidence of their being settled there.

The respondents proved that the appellants had at various times during 40 years past, relieved the father of *G. R.*, the husband of the pauper *Mary*, and different members of his family, some by being taken into the appellant's workhouse, and some in other ways during the time that they resided in the township of *Stanley*, and had provided coffins for and defrayed the expences of the funerals of some of the family. It was also proved that *G. F.* who at the time of appeal was 38 years old, the husband of the pauper *Mary*, and father of the other paupers, was born and had always lived in *Alverthorpe with Thornes*.—Lord *Ellenborough* Ch. J. The relief was given by the township of *Wakefield*, to the father of the pauper's husband, and to different members of his family, which must mean the family of the pauper's husband's father: and this, while they were residing in another township. This was evidence of the pauper's husband's settlement in *Wakefield* at that time: and this is stated to have been done at different times during the last 40 years; the particular periods are not material, for no other settlement has been established since; and all things are presumed to continue in the same state, unless something be shewn to the contrary. Then the only evidence against this, is that of the birth of the pauper's husband in *Alverthorpe*, which is no more than *prima facie* evidence of a settlement there. Then if there were evidence on both sides, the sessions were to decide on it.—The other judges agreed, and *Le Blanc* J. added, that the place of birth is the weakest evidence of settlement. Orders confirmed.

5 *E. R.* 335. 2 *Bott.* 15 pl. 35.

R. v. Chatham. T. 47 G. 3. Removal of *Sally Burgoyne*, widow, from *Ashford* to *Chatham*, and confirmed by the sessions. The pauper was married to her late husband *Robert Burgoyne* in the parish of *Clerkenwell*. A considerable time after their marriage, her husband went to live at *Chatham*. The pauper did not know whether her husband (who had exercised there the trade of a cordwainer, sometimes as a master, and sometimes as a journeyman) had acquired any settlement in *Chatham*, or anywhere else. But she knew he had more than once received relief from the parish of *Chatham*: that he was at one time a fortnight, at another a longer period in the workhouse of the said parish on account of illness; and that he died in the said workhouse, and was buried at the expence of the parish. During all these times of relief he was resident in that parish, but the pauper *Sally Burgoyne*, never resided with him there, nor received relief from that parish, nor gained any settlement there in her own right. The sessions were of opinion that this was sufficient evidence of the settlement

Relief given (many times) to a pauper resident in the relieving parish, is no evidence of a settlement therein.

Poor. (*Settlement.*) [Sect. XVIII.]

the husband in the parish of *Ghatham*. — Lord *Ellenborough* C. J. On subjects of this sort, it is important there should be one uniform rule, as far as is consistent with law: the rule having been laid down by Lord *Kenyon* in *Chadderton*, that the bare fact of giving relief to a pauper within the parish, was no evidence of his settlement, because it might be given to him as casual poor, it is proper to abide by it. In that case indeed, the relief is only administered once; and it becomes necessary to consider whether its having been administered more than once, or several times, alters the case, and differs this instance from the other, for each instance in itself might be evidence of the settlement, and yet it might be difficult to say that several instances might not furnish the conclusion. At the same time, however, it is to be observed, that though the relief were given for any length of time, no inference may either be, that the party receiving was a settled inhabitant, or that his settlement could not be known. This would bring it to an alternative case, on which the courts might draw their own conclusion, and the difficulty would still exist. Upon the whole therefore it appears to be the better rule to adopt, that it does not amount to evidence of the settlement. And there would be great impropriety in allowing it to have any weight; for if the parish officers, by giving relief to a pauper, were to be making

See the cases of *R. v. Kenilworth, Southwram v. Northwram, R. v. Rudgley, (post.)* sect. XIX. 6. (b.); and many other cases scattered through the books.

AND now, upon the whole, having gone through this subject of settlements, and I hope with some perspicuity and exactness; the first reflection that will arise in the mind of every reader, I think, will be to admire the subtilty of human wit. It was the observation of a wise king of *Israel* long ago, that God made man upright, but they have sought out many inventions. A stranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the construction of one short act of parliament, and one single clause of that one short act, and which upon the face of it doth not appear to carry any considerable difficulty.

The next thing that occurs is to reverence the wisdom of the court of king's bench, in clearing up those difficulties, and establishing the sense of the law upon solid and firm grounds; whose determinations, although they are not a law in themselves, yet they are the best and surest exposition of the law; being made by persons of distinguished abilities, educated and exercised in the profession of the law, after argument by able counsel: Which advantages are not ordinarily to be expected at a quarter-sessions. So that the law seems now to be well settled as to these matters; and consequently the disputes about settlements cannot so much arise from the uncertainty of the law, as from the uncertainty of the facts upon that law: And this, from the nature of the thing, must always be uncertain, as depending upon the testimony of witnesses, and those also for the most part of the meanest of the people.

There has been also another cause of much altercation, upon appeals against orders of removal, which arises from some defect in those orders themselves; or from some error in the method of proceeding in relation thereto: Which comes next to be considered.

Sect. XIX. Of Removals; and herein,

1. *Who may be removed; and herein of casual poor.*
2. *Of the order of removal, and suspending the same.*
3. *Of persons removed returning after removal.*
4. *Order of removal of a certificated person.*
5. *Of an appeal against an order of removal.*
6. *Of*

Door. [Sect. XIX. (1.)

- . *Of the effect of an order of removal unappealed against.*
 - . *Of the effect of quashing or confirming orders of removal.*
 - . *Of the power of the sessions in orders of removal.*
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1. *Who may be removed ; and herein,*

- (a.) *Of the removal of the wife.*
- (b.) *_____ servants.*
- (c.) *Of removals under the 35 G. 3. c. 101.*
- (d.) *Of casual poor.*
- (e.) *Of soldiers, &c.*

1. *Who may or may not be removed.*

The statute of the 13 & 14 G. 2. c. 12. which hath been often canvassed in treating concerning settlements, is not to be dismissed by us, but will appear again under this d, in a new and quite different light ; as being that upon which all the orders of removal are or ought to be established. If in this view there have been as many cases adjudged in it, as in the other, although not altogether in so great a variety.

In treating of this subject, we will set forth the statutes ; then we will shew who are removeable, and next the established form of an order of removal thereupon : and then

to any justice of the peace, within 40 days after any such person coming so to settle in any tenement under the yearly value of 10*l.* for any two justices of the peace (one whereof is of the quorum) of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. *l.* 1.

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond. *l.* 3. And by the 17 G. 2. c. 5. All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month. *l.* 1.

Pauper returned to the parish from whence he was removed.

And if the churchwardens and overseers of the parish to which he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions; there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. *l.* 3.

Churchwardens and overseers refusing to receive the person removed.

And by the 3 W. c. 11. If any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty, to another, by warrant of two justices: the churchwardens or overseers of the poor of the parish or town to which the said person shall be so removed, are required to receive the said person: And if he or they shall refuse so to do, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence 5*l.* to the use of the poor of the parish or town from which such person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. *l.* 10.

Upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace] By these words one justice alone hath cognizance of the matter, so far as concerneth the complaint only; and by virtue thereof may issue his warrant to bring the party before him in order to his examination; or he may issue his warrant, to bring the party before himself and another justice, in

One justice may cause a pauper to be brought to be examined, to his settlement.

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to hearing and determining the complaint; for he himself cannot hear and determine, but only bring the matter into the course of being heard and determined by justices: And therefore it is most usual for the two justices originally to issue their joint precept to bring the person before them for that purpose. Nevertheless, if the person is willing, he may go voluntarily before the justices at the request of the overseers, without any warrant at all.

likely to become chargeable] By 35 G. 3. c. 101. so much of the said act of 13 & 14 C. 2. c. 12. as enables justices to remove persons that are likely to become chargeable, is repealed. And it is enacted, that after the 22d of June 1795, no poor person shall be removed from the parish or where he shall be inhabiting, to the place of his last legal settlement, until he shall have become actually chargeable to the parish, township, or place in which he shall then sit, in which case two justices may remove such person, in the same manner, and subject to the same appeal, and exercise the same powers, as might have been done before the passing of this act, with respect to persons likely to become chargeable. s. 1.

Provided always, that every person who shall have been convicted of larceny, or any other felony, or by the law now in force be deemed a rogue, vagabond, idle, or disorderly person; or who shall appear to two justices where such person shall reside,

indeed would vitiate the order ; for the wife cannot be removed from her husband : but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so ; and therefore it must be confirmed. 1 *Str.* 544. *B.S.C.* 815. 2 *Bott.* 80. *pl.* 123.

The wife may be removed without her husband (he having no settlement) if they consent.

E. 44 G. 3. R. v. Eltham. By an order of two justices (which was stated on the face of it to be made *on examination of the husband and with the consent of him and his wife*) *Mary Finn*, wife of *Peter Finn* a Scotchman, who never gained a settlement in England, and their children, were removed from the parish of *St. George the Martyr, Southwark*, to *Eltham* in *Kent*. Against this order there was an appeal, which was afterwards dismissed by the sessions without stating any case upon it : and both these orders being removed into the court of *K. B.* by *certiorari*, it was objected that the wife was removed by such order from her husband who was still living, and probably in the very parish whence she and her children were removed, and whose assent to their separation, even if it could be presumed in favour of the order, was invalid. In *St. Michael's v. Nunney* (*ante*) the court said, that if the husband were in the parish whence the wife was sent, it would vitiate the order : now that fact is to be collected in this case ; for he is stated to have been examined before the magistrates, and to have given his consent to the removal. — But by *Lawrence J.* How does it appear that the husband was living in the parish of *St. George the Martyr* ? He might have been before the magistrates without residing there. The order only states, that the wife and children were come to inhabit in that parish. — *L. Ellenborough Ch. J.* Independent of the last mentioned objection, what doubt is there in the case ? A Scotchman, who has no settlement of his own, and is desirous to give his wife and children the benefit of her's, being unable to maintain them, consents that she should be sent to her parish, to which she herself is willing to go. Why should he not consent ? This is nothing like the contract of separation declared to be illegal in *Marshall v. Rutton*. Servants, and other persons of that description, members of the same family, who are to subsist by their labour, must frequently separate for that purpose. Here there is neither a private nor a public injury. The court affirmed the orders. 5 *E. R.* 113. 2 *Bott.* 90. *pl.* 135.

M. 14 G. 2. Ironaston v. Painewick. Upon complaint made by the churchwardens and overseers of *Painewick*, that *Mary* the wife of *William King*, and children, had intruded into *Painewick*, two justices removed her to *Ironaston*, which they adjudged to be the last legal settlement of the husband. Upon appeal, the sessions confirm that order.

It must appear (to make such removal invalid) that the husband was resident with the wife at the time of her removal.

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was moved to quash these orders. The objection was, the wife was removed without the husband, and that amounts to a divorce between the man and his wife.— the court overruled the objection; for how doth it appear that the husband was not at *Ironaeton* at that time? the court will not suppose it to be wrong, unless it appears

The intrusion complained of was only by the wife, they could not remove the husband when he was not complained of. *B. S. C. 153. 2 Bott. 81. pl. 124.*

T. 14 G. 2. R. v. Higher Walton. Two justices make order to remove *Mary Bennet* wife of *Samuel Bennet*, to *Higher Walton*, which they adjudge to be the place of her legal settlement. And the sessions confirm that order. was moved to quash these orders: for that it did not appear, whether it were this woman's settlement in her own right, or in the right of her husband. And nothing shall be intended. Now if it were not her settlement in right of her husband, the justices had no power to send her thither. by the court: It is adjudged to be her last legal settlement. And she could not be settled but where her husband was. And we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at *Higher Walton*. And the objection was denied. *B. S. C. 162. 2 Bott. 81. pl. 125.*

T. 15 G. 3. Heylandswain v. Carleton. Two justices re-

to reside with the said *Johannah* his wife in her said hired house, and continued to reside with her therein from the time of their said marriage, which was in *September 1766*, until she and the said children were removed, under the said order, from the said *Simon Mac Owen*, and from his said dwelling house wherein he then lived, and still continued to reside; That the said *Simon* from the time of his said marriage, followed the business of a cloth-dresser, and thereby maintained himself, and his said wife and family, until a little time before the said order of removal was made; when his said wife and children being taken ill of a fever, she applied to the overseers of *Hoylandswain* for relief, and she was not recovered at the time she was removed, and could hardly ride. — It was moved to quash these orders, and objected that this would occasion a separation between husband and wife; and amount in effect to a divorce. — And the court were clear, that the removal was wrong. It was not like the case of the husband being dead or having left his wife. Here the husband was alive, resided at *Hoylandswain*; followed the business of a cloth-dresser there; and maintained his family by it for many years, till they were taken ill of this temporary fever, which obliged them to apply for relief. The parish had had the benefit of his labour nine years. The man was settled in a house and carried on business in this place. There might be no business for a cloth-dresser at *Carleton* at all. Or this man might have no acquaintance there. He might starve there, though he could maintain his family at *Hoylandswain*. And both orders were quashed. *B. S. C. 813. 2 Bott. 81. pl. 126.*

H. 18 G. 3. Chesbunt v. Hinksworth. Two justices removed *Sarah*, calling her, in the order, the wife of *Joseph Griffin*, and five of her children, from *Chesbunt* to *Hinksworth*, in the husband's absence, and without having examined him. The order was not appealed against. The husband soon after went to his wife and children at *Hinksworth*, from whence they were all sent back under a new order to *Chesbunt*. The parish of *Chesbunt* appealed against this order, and producing the former order, insisted it was conclusive as to the husband, as well as the wife and children. The sessions, however, after hearing evidence as to *Griffin's* settlement, confirmed the new order as to him, and quashed it as to the wife and children. The wife then went back with her children to her husband at *Chesbunt*. After which a third order was made, removing the children again to *Chesbunt*. This was likewise appealed against, and confirmed as to all but two of the children who were under seven years of age, as to whom it was quashed. — By *L. Mansfield*; There is nothing in this case. It is admitted

Removal of a woman as the wife of J. G. to C. is good, for it will be presumed that C. is the husband's settlement.



to provide for herself; and principally that she was not removeable from her master's service, being hired to him for a year; and they cited *R. v. Marlborough*, *R. v. Brampton* and *R. v. Ozleworth*. — And that *prima facie* (it was also urged) the being pregnant with a bastard raises a presumption by the statute, that she is actually chargeable, and so removeable; and that it lies on the appellant's parish to rebut this presumption.

Lord Ellenborough C. J. The first question is, Whether a married woman who, in the absence of her husband abroad, is pregnant under such circumstances as that the child when born would be deemed by law a bastard, be liable to be removed under the 35 G. 3.? The act indeed says, "that every *unmarried* woman with child shall be deemed and taken to be a person actually chargeable within the true intent and meaning of the act," and removeable: but the legislature plainly had in view that every woman pregnant of a child, which was not protected by the matrimony of its parents, but would when born be a bastard, should be removeable, whether married or unmarried: for though the mother were married, yet if her child would by law be a bastard, she was in *pari jure*, within the scope of this act, with an unmarried woman who was pregnant. The next question is, Whether the order of removal be good in the form of it? It states the complaint of the parish officers of *Disfr*, that *Rebecca*, the wife of *John Knowles*, is *actually become chargeable* to their parish, &c.; and the justices upon due proof made thereof adjudge the same to be true. The act says that a woman under the circumstances above stated "shall be deemed and taken to be a person actually chargeable, &c." Have not then the justices done enough in stating that the pauper was "actually become chargeable to the parish?" They are to draw the conclusion whether chargeable or not, and it is enough for them to state that conclusion upon the face of the order, without stating the premises upon which it was founded. If that conclusion be disputed, the party is to appeal; and such appeal having been made, and the facts stated to us, it is to be seen, 3dly, Whether the premises warranted the magistrates in drawing that conclusion. The legislature intended that an unmarried woman, or, what is the same for this purpose, a married woman under the circumstances I have mentioned, being with child, is *prima facie* chargeable within the law: it raises a presumption of her being chargeable. But I say again, as I said in *R. v. Alveley*, that if it appears that the woman is a person of substance, and that there is no pretence to say, that she is likely to bring a burthen upon the parish, the act did not intend to make such a person liable to be removed. But it is made a presumptive chargeability, so as to put it on the party disputing it to shew that she is a

Otherwise, if it appear that she is a woman of substance, and not likely to bring a burthen upon the parish



band was abroad, and could not have been the father of her child; this was a *prima facie* case to bring her within the 6th clause, and to shew that she was actually chargeable within the meaning of the act: and nothing being shewn to rebut that presumption, it remains presumptively established that the pauper was within the description of persons liable to be removed. The other judges agreed, and both orders were confirmed. 9.E. R. 388.

(b.) *Of removal of servants.*

It hath been observed before, that the justices, upon the complaint of the parish officers, cannot remove the servant from his master: because they cannot upon such complaint dissolve the contract betwixt the master and his servant, to which contract the officers are no parties; for that can only be done upon the complaint of the master or servant. Therefore if a maid-servant shall happen to be with child, which child is likely to be born a bastard, yet if her master is willing to keep her, the parish cannot remove her: but the master, if he pleases, may complain to a justice of the peace, that she is less able to perform the service, and the justice (if he sees cause) may discharge her, and then the parish by order of two justices may remove her.

Whether the servant may be removed from the master.

H. 17 G. 3. *Asbover v. Brampton*. Two justices removed *Hannah Wright* from *Asbover* to *Brampton*. The sessions confirmed the order and stated the following case: That the pauper being settled at *Brampton*, hired herself to one Mr. *Langsdon* of *Eyam* for a year, and served till within three weeks of the end of the year, when her master discovering her to be with child, turned her away, and paid her her year's wages, and half a crown over; whereupon she went to her father's at *Asbover*, from whence she was removed as above stated. Upon her examination in court, she said, she was willing to have stayed her year out if she might; but that it was not material to her, as she had received her whole year's wages, and not being half gone with child, she hoped she could have done her work to the end of the year. In support of these orders it was argued, that a master upon just and reasonable cause may discharge his servant, and that a criminal conduct like this amounts to a reasonable cause: Though it has been said in *R. v. Marlborough, Viner's Abr.* "That a maid-servant got with child can't be removed from her service." This can only mean removed by the parish officers before the contract is dissolved; but this misconduct is a good reason for a master to dissolve it, and there can then be no objection to her being removed. It has been said, that there ought to have been an application to a magistrate to discharge her; but this

A maid-servant may be discharged by her master for being with child, and may then be removed.



settlement: With respect to the hiring, in conformity to the nature and object of the act, the court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances; as, Whether the absence was *with leave*, from *sickness*, &c. ? But these questions have always been brought to this point, *Whether the contract was put an end to within the year?* This cannot be done by dismissal of the servant without good and sufficient cause. In *R. v. Castlechurch* there was a discontinuance by agreement, and the contract therefore determined; in such case the payment of the full wages, which might be mere benevolence, could make no difference. The question then is, *Is this contract dissolved within the year?* The answer depends upon this, Has the master done *right* or *wrong* in discharging his servant for this cause? I think *he did not do wrong*. The marginal note cited from *Viner*, whatever degree of authority it may be entitled to, is well warranted in principle. If the master agrees to the contract's going on, the overseers, it is true, shall not take her away because she is with child; but shall the master therefore be bound to keep her in his house? To do so would be *contra bonos mores*; and, in a family where there are young persons, both scandalous and dangerous: Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shews the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismissal of his servant under a *criminal* charge, shall never be done away by an implication arising from the payment of the whole wages. — *Willes J.* This case differs from that of *R. v. Richmond* (*ante*), nor is it like that of *R. v. Islip* in *Str.* 423. (*ante*), where the cause of the discharge was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant; though I think he could not avail himself of the authority of a magistrate: the jurisdiction of the justices being confined to cases in *husbandry*. — *Asburst J.* agreed. — Both orders affirmed. *Cald.* 11: 2 *Bott.* 317. *pl.* 386. [And see *R. v. Welford*, tit. *Servants*.]

[Upon which Mr. *Caldecott* observes: “ That whether the jurisdiction of justices extends to servants in general, or is confined to servants in husbandry; or whether masters in general may on reasonable cause, by their own authority, discharge their servants, does not seem to be fully and absolutely settled; both points at least were questioned in this cause: All that seems established is, that a master

Observations on the above determination.



R. v. Alveley. E. 43 G. 3. Two justices by an order removed *Jane Kinson*, single woman, from the parish of *Kinver*, in the county of *Stafford*, to the parish of *Alveley*, in the county of *Salop*: in which order it was stated, that upon the complaint of the churchwardens and overseers of *K.* to the said justices, "That *Jane Kinson*, single woman, had come "to inhabit in the parish of *K.* not having gained a legal settlement there, and that the said *J. K.* is with child, and is "therefore deemed chargeable to the parish of *K.* they the "said justices upon due proof, &c. &c. did adjudge the "same to be true, &c. &c." proceeding to adjudge the settlement. The sessions confirmed the order, and stated the following case. The pauper was settled by birth in the parish of *Alveley*, and sometime previous to *Michaelmas 1801*, hired herself for a year to *E. C. of Dunby* in the parish of *K.* for a year, at the wages of 4*l.* She entered and served till *September 2d 1802*, when she being about seven months gone with child, the parish officers of *K.* insisted upon her going before two magistrates for the purpose of being examined as to the place of her settlement, and accordingly took her away from her service on the evening of that day, and the next morning brought her before the magistrates, who made the order of removal. The pauper's master had made no complaints against her, he did not consent to her being taken away, but objected to it, as did the pauper herself, who was perfectly able to do her work. After her examination had been taken she returned to her master's service, and on the following day the parish officers removed her under the order from *Kinver* to *A.* telling her at the same time that she might return to *Kinver*. — *L. Ellenborough C. J.* If the order of removal were good, no doubt it would operate to dissolve the contract. In *R. v. Kenilworth*, the order of removal being unappealed from, was deemed valid; but this is now under appeal, and may be controverted. And that brings it to the question, Whether the order were properly made? Was it not the meaning of the act to prevent the removal of persons until actually chargeable, who were before removeable, if likely to become so; but not to make persons removeable who were not proper objects of removal before that act? Could it be meant that a person in this situation should be torn away from her parents, whatever her condition in life may be, and however far removed from any probability of being a charge on the parish? Is there any instance to be found in the books before this act, of a woman, under these circumstances, being a person of substance, and yet deemed to be removeable? The substance of a person so situated repels the idea of her being chargeable; and the act did not mean to make any one removeable

A single woman, serving a master under a contract of hiring and service, cannot though pregnant of a child which will be born a bastard, be removed from her service, against his consent and his

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who was not so antecedently to the passing of the act. The general provision is, that no person shall be removeable actually chargeable; and the 6th Section introduces an exception to that general rule, leaving the persons so circumstanced to the operation of the law as it stood before the passing of the act. The respondent's counsel observed, that there were no facts stated in the case to shew that the woman was not a person who was likely to become chargeable at the time of the order made, or that the removing magistrates had not exercised their judgment upon that fact; on the contrary, they adjudge her to be chargeable, and before the question, such a person was removeable.—Lord *Ellenborough* C. J. There is nothing of that sort stated in the case, nor any thing in the order itself to shew that the magistrates adjudged her to be chargeable, otherwise than as a consequence of law in their understanding of the act of Parliament; they adjudge that she is with child, “and is therefore deemed chargeable to the parish of *Kinver*.” though the act says, that such a person shall be deemed and taken to be actually chargeable;” yet that is to be understood to be *secundum subjectam materiam*, or as the act itself expresses it, “chargeable within the true intent and meaning of this act,” which I have before explained. It is upon the respondents to shew, that before this act passed, and the mere circumstance of a single woman in the ser-

Contra were cited *R. v. Mathews*, wherein it was refused to quash an order of bastardy not stating that the child was likely to become chargeable. *Hobey v. Kingbury*, where it was held to be sufficient to state that the husband was likely to become chargeable, without stating the same of the wife and child. *R. v. Great Yarmouth*, (8 T. R. 68.) where it was said, that the words of the act (35 G. 3. c. 101. s. 6.) were large enough to comprehend every single woman with child, though residing under a certificate, and consequently in a situation to exclude the possibility of her becoming a charge upon the certificated parish; and that it was not necessary in the order to negative her having a certificate. *R. v. Tibbenham* (9 E. R. 388, ante, 534.) where upon a case stating the bare fact of a married woman, whose husband had been absent from her for four years, being pregnant of a child at the time of the removal, which had since been born a bastard, it was held to be sufficient to warrant the general allegation in the order, that she had become chargeable, if no circumstances were stated to shew the contrary; and that in like manner ought the legal presumption to be made in this case from the same fact in an order, without other controlling circumstances stated. And they further cited the case of *R. v. Diddlebury*, (9 E. R. 398. post. 544.) an order stating that *A. E. single woman, was by being pregnant deemed to have become chargeable, was held good*, the court treating the latter as a legal conclusion from the fact stated of a single woman being pregnant. — Lord Ellenborough C. J. If it were an irrefragable conclusion that, being a single woman and with child, the party removed must be deemed to be chargeable within the meaning of this statute, then this order would be good, otherwise the justices ought to have drawn that conclusion, in order to shew that in their judgment she was a proper object of removal within the poor laws. But consistently with this order, the party might have been a single woman with child worth 10,000l. or she might have given the most ample security to the parish against any charge which could be thrown upon them. The statute in question first gives the general rule, that no persons shall be removed before they are actually chargeable. It then says, that single women with child shall be *deemed and taken to be* actually chargeable within the true intent of the act. But still the justices ought to draw the conclusion that she is within that general rule, otherwise every single woman with child, whatever might be her substance, might be removed by the parish officers. Being unmarried and with child, such a person is presumptively chargeable, from the strong probability of the fact that she must be so; but there may be circumstances, such as the substance

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ance of the party, or the giving a complete indemnity to the parish, which may exclude that presumption. Now if a circumstance of that sort might have existed in this case, and yet the order, as it is framed, be true. In *R. v. Diddlebury*, the Justice deemed her to have become chargeable; she could not have been deemed to be chargeable, if the circumstances had existed in her instance. It ought to appear by the order that the justices have exercised their judgment upon the matter, and repelled the existence of the circumstances by the adjudgment that she was chargeable, in order to shew that she was a proper object of relief within the meaning of the law. Orders quashed. *E. R.* 381.

B. — It was observed by the counsel for the orders, that the magistrates had been misled by a precedent stated in a new edition of *Burn*, published since the statute, and after the author's death: and see the form of an order of removal, *post*, where the requisite alteration is adverted to. *R. v. Diddlebury. E. 47 G. 3.* Upon complaint, "That *Mrs. Evans*, single woman, had come to inhabit, &c. &c. and is, by being pregnant, deemed to have become chargeable to the said parish of *T.*" two justices, "upon due proof made thereof, as well upon the examination of the said *Mrs. Evans* upon oath, as otherwise, and likewise upon due consideration had of the premises, did adjudge the

this *E.* term, and after giving judgment in that case, Lord *Ellenborough* C. J. said, that there was little more to add with respect to this, than that the orders should be confirmed. On the facts of the case as bringing it within the general policy of the poor laws, and the words of the 35 G. 3. there could be no doubt, and with respect to the form of the order of removal, the premises are stated, as in the statute itself, from whence the conclusion is drawn; and therefore all is stated which the statute requires. 9 *E. R.* 398.

R. v. Great Yarmouth. M. 39 G. 2. *Mary Pessile* widow was removed from *Great Yarmouth* to *Ditchingham* in *Norfolk*. The sessions quashed the order for informality, but did not state any case for the opinion of the court. But in the order of removal it was cited and adjudged, that the pauper was with child which was likely to be born a bastard; that she was living in *Great Yarmouth*, not having gained a settlement there; that she was deemed to be a person actually chargeable to *Great Yarmouth*, and that her place of settlement was at *Ditchingham*, without negating her having a certificate from any parish. Both the orders having been removed by *certiorari*, a rule was obtained to shew cause why the order of sessions should not be quashed; against which, on shewing cause, after stating the question intended to be raised in this case to be, whether or not the statute 35 G. 3. c. 101. extended to an unmarried woman who is residing under a certificate, argued in the negative, because no mention is therein made of certificated persons; that if the act did not extend to such persons, the order was defective in not negating that the pauper was living at *Great Yarmouth* under the certificate, for that in *R. v. St. Mary Westport*, (*ante*.) it was ruled that the pregnancy of a certificated person was no ground for removing her as a person actually chargeable, and consequently, if this person were living under a certificate, she was not liable to be removed. — *Per curiam*; The orders which alone are before the court are scarcely sufficient to raise the question, that (it is said) was meant to be agitated, but even if they were, this pauper comes within the words of the statute alluded to, which are general, “every unmarried woman, &c.,” and also within the reason of the act. This clause seems to have been introduced for the very purpose of remedying what was before an apparent defect in the poor laws; for before that act passed a certificated person in this situation could not have been removed, although the child when born would be settled in the certificated parish. Therefore as the words of the statute are sufficiently comprehensive to include this case, there is no reason why we should

An unmarried woman being pregnant may be removed, though she be residing under a certificate.

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now or abridge the construction of them so as to prevent extending to a case that wanted the remedy. 8 T.R. 68. ut. 545. pl. 597.

An apprentice well settled with a master removeable, not be removed with him, but the master may complain the covenant. *Cases of S.* 211.

How far bastards are removeable from their mother. See . VII. (3.)

(d.) Of casual poor.

v. St. James in Bury St. Edmunds, T. 48 G. 3. Justices by an order in the usual form, reciting the complaint of the churchwardens, &c. of the poor of the parish of St. James, &c. that Samuel Offord did lately come to inhabit in the said parish, not having gained a legal settlement there, and that he was then actually chargeable, &c. removed him from St. James in Bury to Ixworth. And the order was quashed upon appeal. The pauper being settled in Ixworth, was employed on the 23d of December 1807, as a day labourer, by R. H. of Ixworth to drive a load of hay to St. James's in the town of Bury, and to return with a load of muck. In loading the muck, he fell and broke his leg. On the 24th two magistrates took the pauper's examination, made out the order of removal, and (the pauper being unable to be moved) suspended the execution of the

of removal made: and that the law threw upon the parish in which they happen to be the obligation of providing for the poor. — On the other side, it was denied that there was any distinction between casual and other poor, as to their removal. And it was said, that before the 35 G. 3. the coming to settle on a tenement under 10l. a-year, and being likely to become chargeable, were convertible terms; and the only difference made by that statute in this respect, is to prevent persons who before were liable to be removed, as being likely to become chargeable, from being removed till they are actually chargeable. That the word *sojourning* used in that statute bespeaks only a temporary stay, as contra-distinguished from *inhabiting*, which implies a regular dwelling. At the time of the order made, the pauper had not only been sojourning in the parish for a day, but was likely to continue there for some time. That the 13 & 14 C. 2. had been long extended to cases not within the precise words of it. And that the distinction between casual and other poor, was only a popular distinction.

Lord Ellenborough C. J. No person is removeable from the parish where he is, but by positive statute. The 13 & 14 C. 2. c. 12 (the statute which confers the power of removing) after reciting that poor people endeavour to settle themselves in those parishes where there is the best stock, &c., and when they have consumed it, then to another parish, &c., says, that it shall be lawful, on complaint of the parish officers, within 40 days after any such person *coming so to settle as aforesaid, in any tenement under the yearly value of 10l. for any two justices of the peace of the division where any person likely to be chargeable to the parish shall come to inhabit*, by their warrant to remove him to the place of his last legal settlement. The expression of *coming to settle*, denotes, that the party comes *animo morandi* or *manendi*: it may be for a temporary purpose, but still it must be understood that he comes to settle there. But how can it be said that the pauper went into this parish *animo morandi* at all? He went into the town with a cart of hay, which he was to dispose of, and return with a load of muck. How then can it be said that he went there to settle? Then if he were not removeable within the terms of the 13 & 14 C. 2. can we find any enlargement of the power of removal? The 35 G. 3. has the words *inhabiting* or *sojourning*; but it would be an extravagant construction of either of those terms to say that it meant to include such a case as this. Then there is no authority for this order, and the sessions have done right to quash it. *Grose J.* agreed, as did *Le Blanc J.* and *Bayley J.*; and *Le Blanc J.* said, that the 35 G. 3. c. 101. was meant to provide, that persons who by law were before

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oveable if likely to become chargeable, should not removed till actually so; and to make provision for sustaining the order of removal, when made in case of sickness or infirmity, and that the expences incurred in the care and maintenance of the persons, between the order to remove and the actual removal of them, should be defrayed by the parish to which they should be found to belong. *E. R.* 25.

(e.) *Of soldiers, &c.*

It may be proper to take notice, in this place, of the act 3 G. 3. c. 8. concerning officers, soldiers, and sailors, who served in the late wars, which makes a provision with respect to such persons that had not been made by any former acts. Before this act they might have set up trades in any city, town corporate, or other place, without being expelled by reason of their exercising such trade: but for other reasons they might have been removed; as, if they did not bring a certificate, and were likely to become chargeable. But now by this act, such officers, mariners, soldiers, and marines, who have served since *November 29th. 1748*, and not deserted (and by the 42 G. 3. c. 69. the same is further extended to those who have served since *16th July 1784*,

2. *Of the order of removal; and herein:*

- (a.) *Of the place from and to which a removal may be.*
- (b.) *Of the complaint.*
- (c.) *Of the justices, their style and jurisdiction.*
- (d.) *Of the county.*
- (e.) *Of the description of the parties.*
- (f.) *Of the being chargeable.*
- (g.) *Of the examination.*
- (h.) *Of the adjudication.*
- (i.) *Of the suspending orders of removal.*

The form of the warrants or precepts aforesaid, where they are requisite, may be to this effect:

Warrant of one justice for a person to be examined concerning his settlement.

Westmorland.—To the constable of—

FORASMUCH as complaint hath been made before me — one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of — in the county aforesaid, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said A. P. is actually chargeable to the said parish of — [or as the case may be]: These are therefore to require you to bring the said A. P. before me, to be examined concerning the place of his last legal settlement. Herein fail you not. Given under my hand and seal, the — day of —

Warrant of two justices in order to the adjudication.

Westmorland.—To—

FORASMUCH as complaint hath been made before us, — two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, by the churchwardens and overseers of the poor of the parish of — in the said county, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that he the said A. P. is actually chargeable [or as the case may be] to the said parish of —; These are therefore to require you to bring the said A. P. before us, at the house of — in — in the said county, on — the — day of — at the hour of — in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be

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her dealt withal according to law. Given under our hands
seals the ——— day of ———.

may also not be unfitting, especially in cases of doubt,
difficulty, to give notice (if it may be) to the overseers of
parish or place where the settlement is supposed to be,
they may attend, if they think proper, when the adju-
dication is made; which probably might prevent appeals
times from such adjudications and orders. Which no-
may be to the effect following :

sumons to shew cause against an order of removal.

Amorland. **T**O the churchwardens and overseers of the
poor of the parish of ——— in the county of
——, and to every of them.

This is to summon you, or some of you, to appear, (if you shall
think proper,) before ———, and such other his majesty's
justices of the peace for the said county of W. as shall be at the
time of ——— in ——— in the said county of W. on ———
—— day of ——— at the hour of ——— in the after-
noon of the same day, to shew cause why A. P. should not be re-
moved from the parish of ——— in the said county of W.
our said parish of ———. Given under ——— hand and
seal this ——— day of ——— in the year of our Lord ———

are actually chargeable to the said parish of Orton (a.) We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and do hereby upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith, in the county of Cumberland: We do therefore require you the churchwardens and overseers of the said parish of Orton or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children from and out of the said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time showing to them the original: and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the day of _____ in the _____ year of the reign of his said majesty king George the third.

- o To the churchwardens of the poor and overseers of the parish of Orton] *Edw. An. St. George's v. St. Olave's.* The order was to convey one Thomas Gilt to the parish of St. Olave, and it was directed, To the churchwardens and overseers of the poor of the parish of St. Olave. Quashed; for they ought and can only order the parish officers where the injunction is, to make the removal. 2 Salk. 493. 2 Bott, 665. pl. 57. If a place be extra-parochial, and hath no overseers, the justices cannot remove from thence, because there are none either to complain or to convey; but the justices ought first to appoint overseers, and then to remove. 2 Salk. 487. Foleys, 97, 98. 2 Bott, 630. pl. 631.

Orders to be executed by the parish officers removing.

As the justices cannot send from an extra-parochial place, unless they have overseers, so neither can they send to an extra-parochial place which hath no overseers, because there are none to receive them. 2 Bott, 629. pl. 680.

Removals from extra-parochial places, not having overseers

Toll v. G. 3. R. v. Tamworth. Two justices removed Thomas Goff and his wife and family, from the hamlet of

Removal to extra-parochial places.

Removals to places which have no overseers.

(a) Or that the said A. P. (viz. the pauper) hath been convicted of blasphemy, or other felony; or is deemed a rogue, vagabond, or a thief (as the case may be); Or that the said A. P. is an unmarried woman, and is with child, and is actually chargeable to the said parish of Orton, according to the case of *Helm, East W. v. C. 1791.*

Bolton and *Glasfote*, to the parish of *Tamworth*, adjudging
 his settlement to be at *Sirefcote*, in the said parish of *Tam-*
worth, and ordering the overseers of *Tamworth* to receive and
 provide for them. — The sessions confirmed the order, and
 ordered specially: That the pauper was legally settled at *Bol-*
ton and *Glasfote*, and was afterwards hired for a year, and
 lived that year at *Sirefcote*, which is a hamlet consisting of
 one house only, and between three and four hundred acres
 of land; but had never contributed to the poor of the said
 parish of *Tamworth*, nor had ever been assessed thereto; but
 had been always assessed and paid to the support of the church
Tamworth: That no overseers had ever been appointed
 for the said hamlet of *Sirefcote*: That the pauper and his
 family were delivered to the churchwardens of the said parish
Tamworth. — In support of these orders it was insisted,
 that the circumstance of the hamlet never having contributed
 towards those burthens which the law threw upon the whole
 parish was perfectly immaterial, and that this place could
 never be considered as a vill, within the meaning of 13 &
 C. 2. c. 12; there being here only one house, and no
 overseers; and that this was clearly a part of the parish of
Tamworth. — On the other side it was contended, that
 it was a distinct vill, independent of the parish of *Tam-*
worth, and to which no pauper could be sent until it had

wrong place, that place ought to appeal, and so *Stepney* ought to have done if it were a wrong place, or else the order will be conclusive upon them: but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the divisions of parishes into townships and villages which maintain their own poor severally and distinctly; and *Stepney* here upon an appeal might have shewn that the person did belong to the township of *Spittlefields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole parish (though so divided), and have a superintendency over the whole villages and townships. 18 *Viner*. 468. 2 *Bott*. 684. pl. 707.

Churchwardens are overseers of a whole parish though it be divided into townships.

T. 10 G. 3. *Kirkby Stephen v. Wharton*. The parish of *Kirkby Stephen* is a large parish consisting of ten different townships, who maintain their respective poor, and have separate overseers. The township of *Kirkby Stephen* and the township of *Wharton* are two of these ten townships. The pauper *William Greer* was removed from *Newport* by an original order directed to the officers of the parish of *Kirkby Stephen*, and adjudging his settlement to be in that parish, and removing him to that parish; and was brought, together with this order, by the overseers of *Newport* and delivered to the overseer of the township of *Kirkby Stephen*. But neither the parish of *Kirkby Stephen* nor the township of *Kirkby Stephen* appealed from the order; and the pauper remained in *Kirkby Stephen*, and was maintained by a sister in the township of *Kirkby Stephen* for near a year and half; when his sister dying, he asked relief of the township of *Kirkby Stephen*; who thereupon got him removed by an order of two justices to the township of *Wharton*. Which order was quashed upon appeal, subject to the opinion of the court of king's bench, upon the above recited state of the case. — By L. *Mansfield* and the court: The original order, made for the removal from *Newport* to the parish of *Kirkby Stephen*, must mean the township of *Kirkby Stephen*. The township was as a parish for this purpose, of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships to which they respectively belong. The township of *Kirkby Stephen* ought, in this case, to have appealed. They could not get rid of this order, but by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the justices, upon the whole truth being disclosed, the pauper might, in the end of the inquiry, have been sent to *Wharton*. — And the order of sessions was affirmed. B. S. C. 664. 2 *Bott*. 687. pl. 801.

But

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but in the case of *R. v. Swalcliffe*, it was determined, the removal of a pauper to *Ascott*, a large, populous village, part of the parish of *Whichford*, but maintaining its connection in common with *Whichford*, was a mere nullity, and was not conclusive although unappealed from. *Cald.* 248. 2 *Bott.* 803.

R. v. Topsham. T. 46 G. 3. This was an order of removal from the parish of *Topsham*, in the county of *Devon*, to "the parish of *Poole*, or town and county of *Poole*," and addressed to the churchwardens and overseers of "the parish of *Poole*, or town and county of *Poole*." There was, in fact, no parish as the parish of *Poole*, but the town and county of *Poole* consisted but of one parish, and the name of that parish was *St. James's in Poole*. And it was objected at the time that the order was improperly directed to the parish of *Poole*, or town and county of *Poole*, when the proper name of the parish was *St. James's in Poole*. This objection the court over-ruled. And the court of king's bench said, there was no objection to the description of "the parish of *Poole*," omitting the mention of its tutelary saint, there being but one parish in the town and county of *Poole*, and *Poole* being the common name of the place. And that the parish officers of *Poole* had themselves considered this description sufficient to call upon them to appeal to the sessions against the order, by whom the objection to the misnomer had been

you. —. It was moved to quash the same for the uncertainty, because it did not say, by which: But by *Parker C. J.* Sure that is well enough, for it is upon complaint of the right, if both complain. *Foley*, 267. 2 *Bott.* 639. pl. 705.

(c) *Of the justices, their style and jurisdiction.*

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace] *M.* 8 *W.* *Walton v. Chesterfield.* An order was quashed, because it did not appear that it was made by two justices: It was only, Whereas complaint hath been made unto us; without reciting their authority as justices. 5 *Mod.* 322. 2 *Bott.* 629. pl. 679. The justices authority must appear.

Two of his majesty's justices of the peace in and for the said county] *M.* 4 *G. R. v. Westwood.* On complaint to one justice, two justices adjudge and remove, and it was held to be well: Otherwise, where one justice sets his hand to the order in the absence of the other. *Cases of S.* 107. 1 *Str.* 73. 2 *Bott.* 631. pl. 686. The complaint may be to justice, but two ought to be together at the adjudication and hearing.

T. 11 *G. 2. R. v. Wykes.* It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal. 2 *Str.* 1092. 2 *Bott.* 642. pl. 717. *Id.* 643. pl. 718. Also at the examination.

And, most undoubtedly, the justices ought to be both together at the hearing and determining; though the practice in many places is otherwise.

But in the case of *R. v. Stotfold*, *E.* 32 *G. 3.* It was determined, that an order of removal signed by two justices separately is not absolutely void, by only voidable, if appealed against in a regular way. 4 *T. R.* 596. 2 *Bott.* 634. pl. 692.

Whether it be necessary that the two justices shall be together at the time, depends upon the circumstance whether the act to be done, be judicial, or merely ministerial. *R. v. Hamstall Ridware.* 2 *Bott.* 375. pl. 438.

M. 12 *An. 2. v. Upin.* The order was quashed, because it did not say that they were justices of the peace, but only justices of the county. *Cases of S.* 27. To be justices of the peace.

M. 13 *G. R. v. Owlton.* Exception was taken to an order for saying—unto us, two of his majesty's justices of the peace in the county aforesaid; for that by this it appears only that they lived in the county, and not that they were justices for that county: And the court held this to be a fatal exception, and quashed the order for that cause. 2 *Saff. C.* 76. 2 *Salk.* 474. 2 *Bott.* 637. pl. 698. And to be for the county, &c.

Door. [Sect. XIX. (2. c.)

23 G. 3. *R. v. Andover.* Exception was taken to an order of removal, That the magistrates stated themselves to be two of his majesty's justices of the peace for the borough or town and parish of *Andover*," &c. Which order was quashed at the sessions *for irregularity upon the face of it.* In support of the order of sessions it was contended, that the form in which the order of removal was drawn, was local and uncertain; that if "*and*" had been substituted for "*or*," an intelligible meaning had been conveyed; but as it stands, they may be justices for the town and not for the borough, or for the borough and not for the town; certainly not for both, nor does it appear for which. — *Per J.* Whether for one or the other, enough appears to support the order; for both town and borough are included with parish. And they sufficiently appear to be justices of either of those places, for which they were empowered to make this order.—*L. Mansfield and Willes J. concurring, (Asburst J. absent,)* order of sessions quashed, the original order affirmed. *Cald. 373. 2 Bott. 638. 31.*

24 G. 3. *W. Ann.* It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute: But this objection was overruled, for that the statute therein is only directory. *Id. 473. 2 Bott. 636. pl. 695.*

But if in fact neither of the justices shall be of the *quorum*, it seemeth nevertheless (except in the case hereafter mentioned, 7 G. 3. c. 21.) that such order shall not be good; for although the statute doth not require that the order shall set forth one of the justices to be of the *quorum*, yet it doth require that one of them shall actually be so. And there are many towns corporate whose charters have no *quorum*, but only constitute certain of the chief officers justices to keep the peace, without giving them power to hear and determine felonies, trespasses, and other misdemeanors. That is to say, they have the power which the justices of the county at large have by the first assignment in the commission of the peace, which is the same that the conservators of the peace had by the common law, and is all that the justices of the peace had at first by their commission. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was super-added to the former some years after the institution of the office of justices of the peace; and this power the justices in divers towns corporate have not, and consequently can have no *quorum*.

E. 6 G. Albrighton v. Skipton. Upon an appeal from an order of removal made by two justices, one of the *quorum*: the sessions, reciting that they had perused the charter of *Albrighton*, and it not appearing thereby that the two justices were either of them of the *quorum*, therefore they quashed the order of removal. But by the court: The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alledged; since they might have a jurisdiction, though it did not appear upon the charter of *Albrighton*. The sessions should have said in general, that it appeared to them, that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices. 2 Str. 300. 2 Bott. 637. pl. 697.

The sessions may examine into the jurisdiction of the removing justices.

But now by the 7 G. 3. c. 21. This is in part remedied: For if in any city, borough, town corporate, franchise, or liberty, they have one (and no more than one) justice actually of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act within such city or other place, shall be valid, although neither of the justices shall be of the *quorum*.

(d.) Of

(d.) *Of the county.*

The county in the margin is not sufficient, but it must appear in the body of the order that the place is in such county, either expressly, or by some words of reference, as in the said county, or in the county aforesaid. *Cases of S. 151. 2 Sess. Cas. 181.*

R. v. St. Stephenson. T. 2 G. 2. There was an order of removal by the justices of the town of *Bedford*, from the parish of *St. Peter's* in *Bedford*, to the parish of *St. Stephenson* in the county of *Bedford*, and it was only said in the margin *the town of Bedford*, without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this *Bedford* lay in, because the appeal must be to the justices of that county where it lies. And of this opinion was the court, but did not quash the order by reason of a flaw in the *certiorari* by which it was removed. *1 Barnardist. 177. 196.*

Holbeck v. Gilderson. M. 16 G. 2. The borough of *Leeds* was in the margin, and the direction was, To the churchwardens and overseers of the poor of the township of *Holbeck* in the said borough. And by the court, That is well enough. And the distinction is, betwixt orders and indictments. In orders, the margin is to be considered as part of the order, and a clear plain reference to the county in the margin is sufficient; but in indictments, the county must be expressed in the body, and a reference to the county in the margin is not sufficient. *B. S. C. 198. 2 Bott. 666. pl. 760.*

Where two counties are mentioned before, the county aforesaid is bad for uncertainty. As in *Stepney v. Chestam. 8 G. 2.* The order was directed to the churchwardens and overseers of the poor of two parishes in two different counties, and the justices call themselves justices of the peace for the county aforesaid. And the order was quashed, because it did not appear for which county they were justices. And the court can intend nothing. For those who act under a jurisdiction given by act of parliament must shew their jurisdiction. *B. S. C. 23. 2 Bott. 638. pl. 699.*

(e.) *Of the description of the paupers.*

Pauper to be named if known,

That John Thomson, Mary his wife, Thomas their son] *M. 11 An. Southwell v. Needwell.* Whereas a certain woman hath intruded, These are therefore to require you to convey: Objection, It is not said who this woman was. And by *Parker Ch. J.* You must either name her, or say a certain

a certain woman unknown. *Cases of S.* 57. 2 *Bott.* 667, *pl.* 763. or if unknown, state him to be so.

T. 10 An. *Cafe of Newington.* Whereas such a person hath intruded into the parish, and is likely to become chargeable; These are therefore to require you to remove him *with three children.* Quashed as to the children, for they have removed more than is complained of. *Cases of S.* 45. 2 *Bott.* 640. *pl.* 707.

H. 10 W. *Johnson's case.* Order to remove a man and his family, not good; because too general; for some of the family might not be removable. 2 *Salk.* 485. 2 *Bott.* 658. *pl.* 735. Children to be described by their name and age.

M. 5 G. *Beaton v. Sisson.* Order for removal of *Thomas Black* and his family: Upon the first reading quashed as to the family, because too general. *Str.* 114.

T. 9 W. *Flixton v. Royson.* Order to remove *Jane Smith* and her five children: Quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children; for she might have more children than five, and some of those five might have gained settlements. 1 *Seff.* C. 11. *Foley,* 278.

T. 10 An. *Ringmore v. Petworth.* The order was, Whereas such a person and his three children are likely to become chargeable, and their last legal settlement was at *Ringmore.* It was moved to quash the same, because the children's ages were not set forth. But by the court: It is not necessary in this case; for the order says, they were last legally settled in *Ringmore,* and then no matter what their ages are. *Caf. of S.* 41.

T. 8 G. *Hobey v. Kingbury.* Two justices adjudging the settlement of the husband to be at *Kingbury,* and that he is likely to become chargeable to *Hobey,* send him, his wife, and son of one year old, to *Kingbury:* and whether this was good as to the wife and child, was the question: And it was held to be well enough; and the order was confirmed. 1 *Str.* 527. 2 *Bott.* 662. *pl.* 649.

M. 9 An. *Q. v. Middleham.* Order to remove a child, of the age of ten years, to *Middleham,* because *Middleham* was the place where his father was last legally settled. Quashed by the court; for that there was no adjudication that *Middleham* was the place of the child's last legal settlement, and at that age it might have gained a settlement. *Foley,* 271. 2 *Bott.* 669. *pl.* 740.

H. 11 G. *R. v. Trinity.* This rule was laid down: Every order that concerns the removal of a father and his children ought to shew the ages of the children, for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set

set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right; but if it appears upon the order that the child was above seven years old, the order must set forth that such child hath not gained a settlement in his own right. 2 *Seff. C.* 74. 2 *Bott.* 667. *pl.* 762.

So in the case of *Bowling v. Bradford*, *H.* 15 *G.* 2. The order removed the father and children (without setting forth their ages) from *Bradford* to *Bowling*, and adjudged *Bowling* to be the place of the father's last legal settlement. By the court: The established rule is, that where the children are sent in consequence of their father's settlement, either the ages of the children must be set out (to shew that they are of such tender years as not to have gained a settlement for themselves; or there must be an express adjudication of their having gained no other settlement. *B. S. C.* 177.

Must have come to inhabit.

Have come to inhabit] *E.* 12 *An.* 2 *v. Graffham*. The order sets forth, that *Henry Tate* and his wife do endeavour to intrude into the parish. And quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it. *Caf. of S.* 16. 2 *Bott.* 640. *pl.* 708.

And not gained a settlement;

Not having gained a legal settlement there] *E.* 1 *An.* *Westm Rivers v. St. Peter's*. Exception to an order of removal, that it was not said, that the pauper did not rent a tenement of 10 l. a-year, according to the words of the act. But as to this the order was held good. 2 *Salk.* 493. 3 *Salk.* 255. 2 *Bott.* 639. *pl.* 703.

Nor produced a certificate.

Nor produced any certificate owning them or any of them to be settled elsewhere] For by the 8 & 9 *W. c.* 30. If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order set forth that they are actually become chargeable, then this clause therein, concerning the certificate, is superfluous.

(f.) *Of the being chargeable.*

Who shall be said to be chargeable has been before shewn.

Chargeable to the parish removed from.

And that the said J., M. his wife &c. are actually chargeable to the said parish of Orton] *T.* 10 *An.* *R. v. Bradford*. — *Likely to become chargeable* (a), but not said to what parish: Quashed. *Cases of S.* 40.

(a) These were the words used before the 35 *G.* 3. c. 101.

But

But in the case of *Barholm v. Witham super montem*, H. 5 G. By the court: *It appearing to us that he is likely to become chargeable*, is sufficient, without saying *to the parish from whence removed*; for it is not to give a jurisdiction, but only the reason of the judgment. 1 Str. 142.

And, M. 7 G. *Maidstone v. Dething*. It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of *Dething*, and is likely to become chargeable, without saying farther *to the said parish of Dething*. 1 Str. 393.

And E. 12 G. *R. v. Loughfield*. An order of removal, whereby a person was adjudged likely to become chargeable, without saying *to the parish from whence removed*, was confirmed. 2 Str. 698.

These are indeed but scraps of cases, minuted down by gentlemen for their own private use, and therefore perhaps not certainly to be relied on. And in the case of *St. Nicholas Gloucester v. St. Peter's Bristol*, H. 11 G. Upon an order of removal of *Mary White*, the reciting part of it was, *Whereas the pauper was likely to become chargeable to the parish of St. Nicholas*; but in the adjudicating part it was only said, that she was likely to become chargeable, without saying *to the parish of St. Nicholas*. The court allowed this to be a good exception, and said they would not take these orders to be good by intendment; for the court will not intend a jurisdiction in the justices, where they do not entitle themselves to it on the face of the order. 2 Sess. C. 73.

And in the case of *Bourne v. Spalding*. E. 8 G. 2. The complaint was, that the pauper was likely to become chargeable to the parish of *Spalding*; and the adjudication was, that the pauper was likely to become chargeable, generally, without saying *to the said parish of Spalding*. And by L. Hardwicke C. J. There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the parish. And he cited the above case of *St. Nicholas's v. St. Peter's* as similar to the present: And said, that the case of *Barholm v. Witham* (a) was not finally determined by the court, but was referred to the judge of assize. And he added, that there was no case that he could meet with, upon the strictest inquiry, where an adjudication at large, without some words

(a) *Supra.*

of reference to the complaint, was holden to be good. *B. S. C. 39.*

So in the case of *Ufculm v. Clystbydon, M. 13 G. 2.* It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were, "And whereas upon due examination and inquiry, it appears to us, and we do accordingly adjudge that they are likely to become chargeable." By *Lee Ch. J.* and the court: The objection is fatal. A complaint must appear of the pauper's being likely to become chargeable to the parish from whence removed; and there must be an adjudication of the truth of it. For the justices have no authority without such complaint and adjudication. We cannot support an order by implication. There is no necessity indeed for any particular form of words. But there must be an adjudication of it in some words or other. *B. S. C. 138. 2 Bott. 668. pl. 765.*

And in the same term, between the inhabitants of *Naberton* and *Hoblench*, an order was given up as indefensible, on the like objection. *B. S. C. 139.*

2. (g.) Of the examination.

What shall be deemed due proof.

Upon due proof made thereof] *H. 10 G. Munger-Hanger v. Warden.* Exception was taken to an order, for that it was said to be made upon due examination, without saying upon oath. But by the court: This is sufficient; for if it is said to be made upon due examination, it shall be understood to be upon oath. *3 Sess. C. 40. 2 Bott. 642. pl. 716.*

H. 13 G. 2. R. v. Fisherton Dallemar. Upon due consideration, was held to be sufficient; for that due consideration implies a due examination. *3 Sess. C. 45.*

One justice may order a pauper to be brought to be examined: but two must be present at the examination.

Upon the examination] *T. 12 W. Ware v. Stanstead Mount-Fitchet.* Exception to an order, for that it was said, it appears upon examination before us, or one of us. By the court: The examination ought to be before both, because both are to make the judgment of removal. And *Gould J.* said, the statute directed, and the practice was, to make complaint to one justice, and he grants his warrant to bring the pauper before two justices, and then they two examine and remove. *2 Salk. 488. 2 Bott. 642. pl. 715.*

And in the case of *R. v. Wykes*, it was held, that the complaint may be to one justice, but the examination ought to be by two. *2 Str. 1092. 2 Bott. 642. pl. 717.*

Examination taken and order signed by two

B. 32 G. 3. R. v. Stotfold. On an appeal against an order, by which *M. Shaw* and his family were removed from *Stotfold* to *Chilvers*; the order was quashed, subject to the opinion

opinion of the court on the following case: The pauper was born at *Stotfold*. but his father's settlement was at *Chilvers Coton*, and the pauper had never gained any settlement in his own right, except as follows: He and his family were, in 1776, removed from *Sandon* to *Stotfold* in the usual form, and were delivered to the parish officers of *Stotfold*, who received them, and did not appeal. The pauper and his family have ever since till the present removal occasionally resided in and been relieved by *Stotfold*. It was then proved by the respondents (but which evidence was objected to by the appellants, but over-ruled by the court) that the order of removal from *Sandon* to *Stotfold*, and the examination on which it was founded, were in fact taken and signed by the two justices *separately, and not in the presence of each other*, and that one of them, though a magistrate for the county of *Hertford* took the examination, and signed the order at his own house situate in that part of *Roydon* which lies in *Cambridgeshire*; *Roydon* lying partly in each county. — The court took time to consider. — *L. Kenyon C. J.* said, that he was not then prepared to state from his papers the reasons at length upon which their judgment was founded, but that he had thoroughly and attentively considered the question; and that the result of his deliberations and of the rest of the court was, that the former order was only *voidable* not absolutely *void*; and therefore that it was necessary for the parish who wished to avoid it, to have appealed against it in a regular course of proceedings. That it would be extremely inconvenient to permit a parish to set aside an order of removal at any distance of time, which had been acquiesced under for years without any dispute; and that a distinction had always prevailed between void and voidable instruments; a strong instance of which was that on the construction of the stat. *Westminster 2. c. 1.* which, though it enacts that all fines contrary to that act shall be *ipso jure* null, has been held to mean only voidable by some legal proceeding. Order of sessions, quashing the original order, confirmed. 4 *T. R.* 596. 2 *Bott.* 634. *pl.* 692.

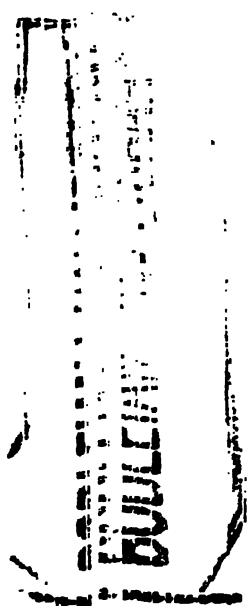
justices separately, is not void but only voidable, it appealed against in due time.

In the above case of *R. v. Wykes*, one justice took the examination, and other two justices removed upon that sole examination, and in the order did set forth that the party was examined *before themselves*; for which, and for not summoning the party before them, an information was granted against the two justices. *Andr.* 238. 2 *Bott.* 642. *pl.* 717. — 643. *pl.* 718.

To be examined by the same justices who remove.

M. 13 G. 2. Coln St. Aldwin's v. Highworth. The order of removal appeared to be wholly grounded upon an examination taken by two justices of another county; and was therefore quashed. They ought to have examined into the

Examination taken by justices of another county.



the court were divided in opinion, and the judges gave their opinions at great length. *Asbhurst* and *Butler* Js. were for confirming, and *L. Kenyon* Ch. J. and *Grose* J. were for quashing the orders; but there not being a majority of the court of opinion that the rule for reversing the orders should be made absolute, they consequently stood confirmed. 3 T. R. 707. 2 Bott. 649. pl. 727.

In *R. v. Nuneham Courtney*. E. 41 G. 3. The order was confirmed by sessions, and it was stated that the pauper had absconded between the notice of appeal and the then next sessions, and could not be heard of; that the respondent parish of *Burcot*, offered in evidence an examination in writing of the pauper, which examination was first taken upon the oath of the pauper, on the 4th June 1799, by one magistrate, upon the complaint of the churchwardens and overseers of the poor of *Burcot*, and to the truth of the contents of which examination, the pauper then made oath before the justices, who thereupon made the order on that same day. But no person was present belonging to *Nuneham Courtney*; whereupon the appellants objected to the admissibility of this evidence, but the court over-ruled the objection. But the court of king's bench without argument, expressed a decided opinion against the admissibility of such evidence. 1 E. R. 373. 2 Bott. 653. pl. 728.

An examination of a pauper for the purpose of removal, is not evidence, upon an appeal against that order of removal, though the pauper cannot be found.

M. 42 G. 3. R. v. Ferry Frystone, otherwise Ferry Bridge. On appeal, the sessions confirmed the order of removal, subject to the opinion of this court on a case, stating, that upon hearing the appeal the respondents in support of the order of removal produced the pauper *Catharine Hill* as a witness; who deposed, "that she was the widow of *John Hill*, "and that she had heard the said *John Hill*. in his "life-time say, that his settlement was at *Ferry Bridge*, "which he said he gained by hiring with and serving one "J. Hawkeshead, a bricklayer in *Ferry Bridge*, for a year." The respondents then gave in evidence the examination, of which the following is a copy: "East riding of the county "of *York*.—The examination of *John Hill*, late in the royal "artillery, now residing at *Kilnwick* in the said riding, taken "upon oath this 15th day of *April* 1788; who saith, that "his legal settlement is at *Ferry Bridge*; that he acquired the "same by servitude; namely, by being hired for one whole "year, and serving the said year with *J. H.* bricklayer of "*Ferry Bridge*; and that he hath not gained any legal settle- "ment elsewhere since to the best of his knowledge and "belief.—(Signed and attested.)" No proceedings were had in consequence of this examination until the order of removal, the subject of this appeal, was applied for and made. The respondents did not offer any other evidence than what is

Nor, if the pauper's husband be dead, is his examination in writing evidence.



late of *Clayton le Moors* in the county of *Lancaster*, But now a soldier in his majesty's first regiment of foot guards, touching his settlement, taken on oath before us *W. Addington* and *W. Kitchiner* esqrs. two of his majesty's justices of the peace in and for the county of *Middlesex*, this 26th of *April* 1794; who on his oath saith, &c. &c. [By this examination it appeared that *J. Farrer* was settled at *Clitheroe*.] Signed, the mark of *James Farrer*; sworn before us this 26th of *April* 1794, *W. Kitchiner*, *W. Addington*." The witness proved that the paper, excepting the name of the said *W. Addington*, standing by itself, was a true copy examined by himself of another paper-writing which the witness saw in the office of the said *W. Addington* in *Bow-street*, *London*; that he saw *W. Addington* subscribe his name to the paper-writing now produced, and received it from him on 26th *April* 1794; but that he did not know the person of the pauper, nor was he present at his original examination.—The sessions were of opinion, that the above paper ought not to be read in evidence under the mutiny act, and quashed the order of removal.—*L. Kenyon* Ch. J. This clause in the mutiny act is of modern introduction; and before that time, there is no pretence to say that such an examination as the one in question could be received in evidence. It is admitted, that it is contrary to the common rules of evidence. Whether it were or were not wise to introduce such a clause in the mutiny acts, which was not formerly contained in those statutes, it is unnecessary to inquire; but the question here is, whether this act of parliament, which makes an innovation on the law of evidence, should be carried beyond the express words of it? In my opinion it ought to be construed strictly: for the examination which is to be made evidence, is an *ex parte* examination, which the parish interested have no opportunity of knowing at the time it is taken; and of course they are deprived of all opportunity of cross examining the party who makes it. The act directs, that under certain circumstances the party shall be examined respecting his settlement before two magistrates, and then it directs the magistrates to give an attested copy of such affidavit so made before them to the person making the same, to be by him delivered to his commanding officer, in order to be produced when required. If the act had stopped here, neither the original examination nor the copy would have been evidence; but the act immediately adds, "which attested copy shall be at any time admitted in evidence, &c." There seems to be some absurdity in saying that the inferior species of evidence, namely, the copy of that examination, shall be evidence, when the superior evidence, the original examination, is not evidence. It is not necessary, however, to say here, whether or not the original

ginal is evidence; and it is sufficient for the determination of this case to say, that the copy of the examination tendered in evidence at the sessions, is not the copy which the act directs to be received in evidence. The other judges delivered their opinions to the same effect. Order of sessions confirmed. 5 T. R. 704. 2 Bott. 551. pl. 603.

But in the case of *R. v. Warley*, H. 36 G. 3. it was determined, that such original examination is evidence; and L. Kenyon Ch. J. added, that on this question it was impossible to doubt; the proposition in this case attempted to be supported is, that the attested copy is of more weight than the original examination; but it is fair to conclude that the legislature when they made the inferior species of writing evidence, also intended to make the superior evidence. 6 T. R. 534. 2 Bott. 553. pl. 604.

In *R. v. Bilton with Harrowgate*, M. 41 G. 3. it was holden that the examination of a soldier touching his settlement, which is made evidence by the mutiny act, must be authenticated before it can be received in evidence, and does not prove itself *prima facie*, though the paper appear to be in the form prescribed by the statute. 1 E. R. 13. 2 Bott. 554. pl. 605.

The pauper himself ought to be summoned and heard.

Examination of the said John Thompson] T. 11 & 12 G. 2. *R. v. Wykes*. A person ought to be summoned, and be heard before he be removed; for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer; and therefore natural justice requires that he be not condemned unheard. Andr. 238. 2 Bott. 643. pl. 718.

Is not necessary in all cases that the pauper himself should be examined.

But in the case of *R. v. Bagworth*, E. 22 G. 3. Objection was taken to the form of the order, that it did not appear to have been made upon proper and sufficient evidence; that it was made only upon examination of the premises; that an inquiry generally into the subject matter is not enough; that the pauper himself must be examined; and was so holden in *R. v. Wykes* and others. But by the court; It cannot be necessary in all cases that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule. The case of *Comberbach* is in point; in that case Holt Ch. J. says, "If it can be, 'tis fit it should be so, but not absolutely necessary." Cald. 179. 2 Bott. 644. pl. 722. See *R. v. Everdon*, post, 574.

Any magistrate may take the examination of an infirm pauper as to his

By the 49 G. 3. c. 124. s. 4. *Whenever it shall happen that any pauper is by age, illness, or infirmity, unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where* such

such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district, and for the said magistrates upon such report to adjudge the settlement of the said pauper, and make and suspend the order of removal, as fully and effectually to all intents and purposes, as if the said pauper had appeared before two magistrates.

settlement, and report to petty sessions.

R. v. Jackson and another, *B. 27 G. 3.* A rule was obtained to shew cause why an information should not go against the defendants, justices of the borough of Kendal in Westmorland, for misbehaviour in their office, who were charged with having committed a pauper to prison, whom they were examining relative to his settlement, for not answering a particular question propounded to him, under which commitment he continued in prison for 13 days, which it was contended was so manifestly illegal that they must have known they were exceeding their authority, and therefore that it must be intended that they acted from corrupt motives. But it appearing on reading the affidavits on both sides, that no corrupt motives were to be imputed to the defendants, the rule was discharged. — And *Asburs J.* said, he would not then decide whether magistrates have or have not a power to commit a pauper for refusing to answer proper questions put to him in the course of his examination. They certainly have a right to examine a pauper touching his settlement; and yet that would only be a shadow of a right, unless they had likewise a power of enforcing that examination, by committing the pauper for refusing to be examined. — *Buller J.* said, With regard to the power of commitment, he did not know how justices were to act, unless they had such a power. This commitment, “until he should answer,” he thought right; and though the pauper continued in prison under the commitment 13 days, that will not make the case stronger against the defendants. The party committed for refusing to be examined is to clear himself, and when he will answer must give notice to the magistrates. This is like the case of a commitment by the commissioners of a bankrupt, where the party committed must send word when he will submit and answer the questions. Rule discharged. 1 *T. R.* 653. 2 *Bott.* 649. pl. 726.

A pauper refusing to be examined.

(b) *Of the adjudication.*

Do adjudge the same to be true] *T. 13 W. Suddescomb v. Burroughs.* Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices. 2 *Salk.* 491. 2 *Bott.* 655. pl. 736.

The justices to make an adjudication.

Poor. [Sect. XIX. (2. b.)]

4 G. R. v. *Westwood*. Order quashed, because the
 es only say, *We order him to be removed to such a place,*
the place of his last legal settlement, without adjudging that
 the place. 1 *Str.* 73. 2 *Bott.* 661. pl. 747.

3 & 4 G. 2. R. v. *Minchin-hampton*. Order, Whereas
 plaint is made to us, that such a person is now become
 geable, we do adjudge that the last place of his lawful
 ment is in the parish of *Minchin-hampton*. Objected,
 here is no adjudication that he is likely to become
 geable; and quashed for this reason. 2 *Seff. C.* 93.

4 G. *Stallinburg v. Haxby*. On examination we do
 the same to be true. Quashed; for a man may believe
 ng on uncertain evidence. 1 *Seff. C.* 131. 2 *Bott.* 661.
 46.

10 An. *Waltham Magna v. W. Parva*. Whereas such
 rson is likely to become chargeable, as we are *credibly*
med, these are therefore to require you to remove:
 shed, for that here is no adjudication that he is likely
 come chargeable, and this is only the belief of another.
of S. 38. 2 *Bott.* 660. pl. 742.

nd we do likewise adjudge that the lawful settlement] E.
 . *Bury v. Arundel*. Whereas complaint hath been made
 us, that *Jacob Duckin*, with his wife and children, came
 his place of abode and last legal settlement in *Bury to*
ndel. We therefore require you to remove: Naught: for

elsewhere, and they not know it. Quashed. *Cases of S. 32.*
2 Bott. 661. pl. 744.

And provide for them] The statute directs, that the place whither they are sent shall receive and provide for them; for which reason the same is inserted here in the order; but it seemeth that when the removal is into another county, those words are unnecessary, because ineffectual; for that the justices in one county cannot take order for the relief of poor persons in another county.

To be provided for where removed to.

(i.) *Of suspending orders of removal.*

By 35 G. 3. c. 101. *After reciting that poor persons are often removed to their settlements during sickness, to the danger of their lives; for remedy thereof, in case any poor person shall be brought before any justices for the purpose of being removed by an order of removal, and it shall appear that such poor person is unable to travel by reason of sickness or infirmity, or that it would be dangerous for him so to do, the justices who shall make such order of removal, may suspend the execution thereof, until they are satisfied that it may safely be executed without danger; which suspension of and subsequent permission to execute the same, shall be indorsed on the said order, and signed by such justices. And no act done by any such poor person continuing to reside under the suspension of any such order, shall be effectual, in whole or in part, for the purpose of gaining a settlement. And the charges proved on oath to have been incurred by such suspension, may by the said justices be directed to be paid by the churchwardens and overseers of the place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such pauper before the execution of such order; and if the churchwardens or overseers of the place to which the order shall be made, shall, upon the removal or death of such pauper, refuse or neglect to pay such charges within three days after demand, and shall not within the same time give notice of appeal as herein-after mentioned; one justice, by warrant under his hand and seal, may cause the money mentioned in such order to be levied by distress and sale of the goods and chattels of the person so refusing or neglecting payment thereof, and also such costs, not exceeding 40s. as such justice shall direct. And if the place to which such order of removal was made, be without the jurisdiction of the justice, issuing the warrant, then such warrant shall be transmitted to any justice having jurisdiction within such place, who, upon receipt thereof, shall indorse the same for execution. s. 2. See 5 G. 3. c. 124. post, p. 576.*

The removal of sick persons may be suspended.

Charges of such suspension to be paid by the parish removed to.

Which may be levied by distress with costs.

Shall indorse the same] M. A. G. 3. R. v. Kynaston. A rule having been obtained to shew cause why a mandamus should

should not issue to Mr. *Kynaston* a magistrate of the county of *Essex*, commanding him to back the warrant of distress issued by the magistrates for the borough of *Colchester*, for 20*l.* 16*s.* 3*d.* being the expences incurred by the parish of *Lenden* in the maintenance and support of *D. Glover* and *Ann* his family, and for surgical assistance, &c. for the said *D. G.* in his illness, during the suspension of an order for removing him to his parish, and 30*s.* for the reasonable charges of the levy. It appeared that *Glover* on the 1*st* of *May* 1799, as he was driving a waggon on the public road leading through *Lenden*, had the misfortune to break both his legs, and was immediately taken to the workhouse there, where he continued till the 31*st* of *July*. On the 6*th* of *May* two justices took the pauper's examination, and made an order for removing him and his wife, who was then attending him, from *Lenden* to *Coggeshall* in *Essex*; and at the same time the magistrates indorsed an order of removal, by virtue of the statute 35 G. 3. c. 101. stating that it would be dangerous to remove him at that time; and he continued there accordingly till the 31*st* of *July*, when the order of removal was by their permission executed. The same magistrates afterwards made an order on the parish officers of *Great Coggeshall* to repay the parish of *Lenden* 21*l.* 16*s.* 3*d.* for expences incurred in the cure and maintenance of the pauper: and the overseers of *Great Coggeshall* not paying this within three days after demand, nor giving notice of appeal, as required by the same act, the magistrates granted a warrant of distress; but *Great Coggeshall* being without the jurisdiction of the magistrates granting the warrant, the parties applied to the defendant who was an acting magistrate within the jurisdiction of *Great Coggeshall* to indorse the warrant of distress for execution, which he refused; whereupon the present rule was obtained.—*L. Kenyon*, after looking into the act of the 35 G. 3. c. 101. said it was impossible to make any question upon this part of it: it is peremptory upon the magistrate under these circumstances to indorse the warrant; he has nothing to do with the propriety of making the original warrants: he acts merely ministerially; in like manner as justices do in allowing a poor rate, whose signatures are mere matter of form. The justices indeed by whom the original order and warrant were issued had a discretion to exercise upon the matter submitted to them; but the magistrate who merely indorses the warrant of another under this act is not answerable for the legality of it, which remains at the hazard of him who first granted it; here also the order being for payment of above 20*l.* might have been appealed against by the parties who were dissatisfied with it, and then the merits

merits of the question might have been discussed; but the court cannot do otherwise at present than make the rule absolute. 1 E. R. 117. 2 Bott. 680. pl. 790.

Provided, that if the sum so ordered to be paid on account of such costs and charges, exceed 20l. the party aggrieved may appeal to the next sessions against the same, as they may do against any order of removal by any law now in being; and if such sessions be of opinion that the sum so awarded be more than ought to have been directed to be paid, such court may strike out the sum contained in the said order, and insert such sum as in their judgment ought to be paid; and shall direct that the said order so amended, shall be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such other justice or justices as the said court shall direct. 35 G. 3. c. 101. s. 2.

If costs exceed 20l. appeal may be made to the sessions.

R. v. Bradford. M. 48 G. 3. An order was made on the 7th of July 1807, for the removal of Sarah Spirea a pauper, from Bradford to Melksham in Wilts; and the same justices at the same time made another order, suspending the execution of the first, by reason of the sickness and infirmity of the pauper, pursuant to the 35 G. 3. c. 101. s. 2. And on the 16th of September following they made a third order, directing the first order to be executed, and the sum of 41l. 14s. 9d. expence, which had been incurred by the suspension of it, to be paid by Melksham to Bradford. On the 17th of September the pauper was carried to Bradford; and a motion was made at the Michaelmas sessions following, to enter and adjourn an appeal against the last order for the payment of the expences incurred by the suspension of the order of removal, under the before-mentioned statute, which was agreed to by the court; but they stated these facts specially, and reserved the question for the opinion of this court, whether by the 35 G. 3. c. 101. s. 2. any appeal were allowed to the quarter sessions, the appellants not having given notice of appeal *within three days* after the removal of the pauper to the respondent parish, as mentioned in that clause of the act; or whether the appellants were not concluded by their neglecting to give such notice from afterwards entering and prosecuting their appeal: the court stopped the counsel who was to have argued in support of the jurisdiction; on the other side it was relied upon the prior words of the clause which direct, that in case the parish officers to whom an order of removal has been directed, which had been suspended, and certain charges incurred in consequence of such suspension, "shall upon the removal or death of such poor person ordered to be removed, refuse or neglect to pay the said charges *within* " three

Of appeal against an order of justices for payment of the charges of an order of suspension.

[See the case of *R. v. St. James's*, in *Bury St. Edmund's*, (*ante*, this section (1. d.))]

By the 49 G. 3. c. 124. reciting, that whereas by the 35 G. 3. c. 101. it is amongst other things enacted, that in case any poor person shall be brought before any justice or justices of the peace for the purpose of being removed from the place where he or she is inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it shall appear to the said justice or justices that such poor person is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do, the justice or justices making such order of removal or granting such vagrant pass, are required and authorized to suspend the execution of the same until they are satisfied that it may safely be executed without danger to any person who is the subject thereof, and that the charges proved upon oath to have been incurred by such suspension of any order of removal, may by the said justices be directed to be paid by the churchwardens and overseers of the parish or place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order: and by the same act it is further enacted, that in case of an appeal against any order for the payment of such charges, if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court is directed to strike out the sum contained in the said order, and insert the sum which in the judgment of such court ought to be paid; and in every such case the court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such other justice or justices as the court shall direct: and reciting also, that it is expedient that the power of putting an end to the suspensions of any such order of removal or pass, and of executing the several or other authorities aforesaid, should not be confined to the order of the justice or justices making such order or pass: it is enacted, that in all cases wherever the execution of any order of removal or of any vagrant pass shall be hereafter suspended by virtue of the said 35 G. 3. c. 101. it shall be lawful for any other justice or justices of the peace of the county or other jurisdiction within which such removal or pass shall be made, to direct and order that the same shall be executed, and to direct the charges to be incurred as aforesaid,

In all cases where any order of removal or vagrant pass shall be suspended, any other justice of the county or place where such removal or pass

to be paid, and to carry into execution any such amended orders as aforesaid, as effectually to all intents and purposes, as the said respective powers and authorities can or may be executed by the said justices who shall make any such order of removal, or by the justices who shall grant any such pass as aforesaid.

shall be made, may order the same to be executed, &c.

And by s. 2. when the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of serving such order, and not from the time of making such removal under and by virtue of the same.

How the time of appealing shall be computed.

And by s. 3. in order to avoid any pretence for forcibly separating husband and wife, or other persons nearly connected with or related to each other, and who are living together as one family at the time of any order of removal made, or vagrant pass granted, during the dangerous sickness or other infirmity of any one or more of such family, on whose account the execution of such order of removal or vagrant pass is suspended; be it further enacted and declared, that where any order of removal or vagrant pass shall be suspended by virtue of this or of the said recited act, on account of the dangerous sickness or other infirmity of any person or persons thereby directed to be removed or passed, the execution of such order of removal or vagrant pass shall also be suspended for the same period with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person or persons at the time of such order of removal made, or vagrant pass granted.

Order of removal suspended in case of sickness, may also extend to other persons named in the order to prevent the separation of a family.

The form of suspension of an order of removal, to be indorsed on the back thereof, may be thus:

WHEREAS it doth appear unto us J. P. & K. P. the justices within named, that A. P. the pauper within ordered to be removed, is as present unable to travel by reason of sickness and infirmity [or, that it would be dangerous for him so to do, as the case may be]: We do therefore hereby suspend the execution of the within order of removal, until it shall be made appear unto us, that the same may safely be executed without danger. Given under our hands the ——— day of ———.

J. P.
K. P.

Form of a subsequent permission to execute such order of removal, to be indorsed thereon. And order for payment of the expences incurred by such suspension.

WHEREAS it is now made appear unto us J. P. & K. P. the justices aforesaid, and we are fully satisfied, that the within order of removal may be executed without danger; We do therefore hereby order the same to be forthwith put in execution accordingly. And whereas it is duly proved to us upon oath [if such pauper die, say, that the said A. P. the pauper above mentioned is dead, and] that the sum of — bath been incurred by the suspension of the within order of removal; We do therefore order and direct the churchwardens or overseers of the par of the parish of — to which parish the said A. P. [was, if the pauper be dead] is ordered to be removed, to pay the said sum of — to A. O. upon demand. Given under our hands the — day of —.

J. P.
K. P.

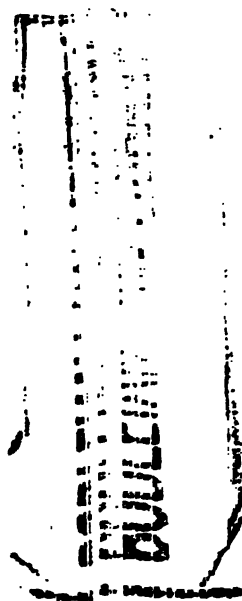
Of filing orders of removal at the sessions; and making a record of the whole proceedings.

So much concerning the usual form of an order of removal: And after such order and adjudication is made, that the same may appear upon record afterwards, in order to charge the parish, it was said by *Holt Ch. J.* (1 *Salk.* 406.) that the most regular way for the justices to proceed is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overseers, to convey the persons to the parish to which they ought to be sent, and deliver in the record by their own hands into court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal was made in pursuance of such order, otherwise, how shall the parish be charged by an order which possibly they knew nothing of, and consequently could have no opportunity to appeal against? It is usual in some places, for the overseers who made the removal, to bring the original order to the next sessions, and there make oath, that they removed the party in pursuance of such order, and if then there appeared to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as such order is a record of itself, and contains in it the adjudication of the justices, it seemeth that the court may record thereupon likewise, that no appeal was

was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth, that unless it be upon appeal, they have ~~now~~ power to inquire concerning the removal, for that as to them is extrajudicial: But the justices, who made the order, have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded. And the form thereof may be thus:

Westmorland. **B**E it remembered, that on the nineteenth day of January, in the thirty-second year of the reign of our lord George the second, of the united kingdom of Great Britain and Ireland king, defender of the faith, at Middleton in the county aforesaid, Roger Thirnbeck, overseer of the poor of the township of Middleton aforesaid in the county aforesaid, cometh before us, John Moore, esquire, and Richard Burn, clerk, two of the justices of our said lord the king assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorums, and complaineth to us the said justices, and giveth us to understand and be informed, that Solomon Caradice, son of Alice Caradice, aged nine years, hath come to inhabit and doth inhabit in the said township of Middleton in the county aforesaid, and is become chargeable to the said township, and that the said Solomon Caradice hath not gained any legal settlement within the said township, nor hath produced any certificate owning him the said Solomon Caradice to be settled elsewhere; and thereupon he the said Roger Thirnbeck prayeth our warrant to remove and convey the said Solomon Caradice to the parish or place where he the said Solomon Caradice was last legally settled.

And on the said nineteenth day of January in the year aforesaid, at Middleton aforesaid, in the county aforesaid, Margaret Caradice, grandmother of the said Solomon Caradice, cometh before us the justices aforesaid, and upon her oath on the holy gospel to her then and there by us the justices aforesaid administered, deposeth and sweareth, that she the said Margaret Caradice had a daughter whose name was Alice Caradice, which Alice Caradice was never married, and is now dead, and that she the said Alice Caradice did bear the said Solomon her son, at the parish of Beetham in the county aforesaid, and that the said Solomon hath been carried or gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said town-



parish, but from county to county; and therefore there is no remedy but by indictment.—*Foster J.* In all cases where a justice has power given him to make an order, and direct it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable. And judgment was given against the defendant. 1 *Bott.* 338. *pl.* 409. [To which may be added, that the statute of 13 & 14 C. 2. c. 12. requires, in express words, that such officer refusing *shall be bound over to the assizes or sessions, there to be indicted.*]

3. Of persons removed returning after removal.

If the person removed returns of his own accord, without a certificate; the aforesaid act of the * 13 & 14 C. 2. c. 12. and also the vagrant act of the 17 G. 2. c. 5. have directed that he shall be sent to the house of correction, according as is above expressed. In the case of *R. v. Angell*, T. 8 G. 2. The justices of *Berkshire* held a petty sessions to search after vagrants, and a poor man residing in the parish of *Bingfield*, being examined, confessed himself to be settled in the parish of *Sunning*; whereupon the justices ordered him to be removed to *Sunning*. On his returning from *Sunning* without a certificate, the defendant, who was one of the justices that had been present at the said petty sessions, did, without any summons, or oath made of his return, commit the man to the house of correction, where he was kept three days. Upon this, the court was moved to grant an information against the justice. The court allowed the transactions of the petty sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to the parish of *Bingfield*; but yet, as that was only a mistake of judgment, the court would not have thought it worthy of punishment; but the sending him to the house of correction, after having convicted him unheard, being contrary to natural justice, they were inclinable to grant an information; but as no malice appeared in the justice, the court allowed the prosecutor to accept of some proposal made by the justice, to make him satisfaction. *Cases in the time of Lord Hardwicke*, 124. 2 *Bott.* 681. *pl.* 791.

Persons removed returning to the place removed from, must be charged there-with on oath.

In the case of *Baldwin* and his wife v. *Blackmore* esquire, E. 31 G. 2. *Baldwin* and his wife were removed by order of two justices from *Marsden* to *Banknewton*. Which order was not appealed against. Afterwards, they both of

The warrant of commitment must be for a time definite.

* This sect. (1.)

them returned to *Marsden* without bringing a certificate, complaint of which being made in writing and upon oath to the defendant a justice of the peace, he issued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the house of correction, *until they should be discharged from thence by due course of law*. Upon the trial of this cause, there was a verdict for the plaintiff, and 1s. damages, subject to the opinion of the court, on the two following questions: 1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband? On the argument of this cause, *L. Mansfield* desired to be informed how the usage had been, about sending the wife to the house of correction with the husband: (though it would not indeed, as he observed, alter the law.) Afterwards this case being mentioned as standing for the opinion of the court, it was said for the defendant, that he had several certificates of its being the practice for justices to commit the wife, as well as the husband, for returning to the parish from whence they had been removed, although she so returned with her husband. — *L. Mansfield* delivered the resolution of the court: He observed, that it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1s. damages. The court would gladly therefore have leaned towards excusing him from suffering for what he had honestly done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which put all the other points out of the case; and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded; though it doth not appear upon which of the two the justices proceeded. These two acts are, 13 & 14 C. 2. c. 12. (a law made before the certificates under the late acts existed;) and the 17 G. 2. c. 5. (which relates to persons returning without bringing such a certificate.) Now the warrant is not within the former of these acts: The commitment is, *till discharged by due course of law*; whereas upon this act it should have been, *to the house of correction, there to be punished as a vagabond, or to a public workhouse, there to be employed in work and labour*. Nor can this warrant be good

on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction *there to be kept to hard labour for any time not exceeding one month*: Whereas this warrant is quite general; It is an indefinite commitment; not for a precise limited time as the act directs. Therefore the warrant of commitment is totally illegal; and consequently the plaintiff is entitled to the damages that he has recovered. 1 *Burr.* 595. 2 *Bott.* 682. *pl.* 793.

[Note, It seemeth adviseable, if the party returns without a certificate, not to send him to the house of correction till the time for appealing against the order for removal shall be expired; for the sessions may quash the order. And the statute of C. 2. says, if he shall not remain in such parish *where he ought to be settled*, he shall be sent to the house of correction. And the 17 G. 2. says, All persons who shall *unlawfully* return to such parish or place from whence they have been *legally* removed by order of two justices, shall be so sent to the house of correction. It is true the order may be supposed *legal* till reversed: But it may put the pauper to great inconvenience in removing his goods, family, and trade, and their returning (possibly) after the next sessions.]

R. v. Elere Cole. M. 12 G. 3. A motion was made to discharge a man out of custody upon the following objections: 1st, The commitment does not state to what place the man returned: 2dly, Nor that he returned without a certificate: 3dly, That it did not appear that he had been before convicted as a vagrant, which prior conviction alone, under the 17 G. 2. c. 5. gives a power of commitment for a month. The commitment was "for returning from the parish of *St Sepulchre's* after a legal warrant of removal from the parish of the *Holy Trinity*." And the court agreed that the commitment could not be supported, as it did not say to what place he returned. 2 *Bott.* 683. *pl.* 794.

The commitment must state to what place the pauper returned.

R. v. Fillongley. M. 29 G. 3. The pauper returned to the parish from whence he had been removed, and resided upon a tenement of the yearly value of 10 l. and upwards: the court said he had a right to return, for that an order of removal only prevents a return in a state of vagrancy. 2 *T. R.* 709. 2 *Bott.* 684. *pl.* 795.

4. Form of order of removal of a certificate person,

As it will appear from what hath been said under the former head, concerning the removal of poor persons having no certificate, that in most of the books there are many bad orders; so it will appear from thence, and from what will be

Removal of certificate persons.

Door. [Sect. XIX. (4.)

under this head, concerning the removal of certificate persons, that as to this kind of removal, there is scarce one good order, (which is a little surprising in a matter of daily practice,) yea scarce one which is capable of being amended even by the statute of the 5 G. 2. for there are objections which go to the very essence and substance of the order, especially want of proper adjudications, either that the party is not chargeable, or of the place of his last legal settlement (for he may have gained one after the certificate), or that for judgment without adjudging, is a contradiction; where there is no judgment, there is in strictness nothing to appeal against, but only an order that the parish shall receive and provide for a person who for aught appears doth belong to them.

By the 8 & 9 W. c. 30. *If any person who shall come into any parish or place, here to reside, shall deliver a certificate to the churchwardens or overseers there, such certificate shall be the parish or place granting the same, to receive and provide for the person mentioned in the said certificate together with his family, as inhabitants of that parish, whenever they shall be chargeable to, or be forced to ask relief of the parish, township or place, to which such certificate was given; then, and not before, it shall be lawful for any such person, his children, though born in that parish, not having otherwise*

Form of an order of removal of a certificate person.

Westmorland. { To the churchwardens and overseers of the poor of the parish of *Orton* in the said county of *Westmorland*, and to the churchwardens and overseers of the poor of the parish of *Penrith* in the county of *Cumberland*.

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of *Orton* aforesaid, in the said county of *Westmorland*, unto us whose names are bereunto set, and seals affixed, being two of his majesty's justices of the peace in and for the said county of *Westmorland*, and one of us of the quorum, that *John Thomson*, *Mary* his wife, *Thomas* their son aged eight years, and *Agnes* their daughter aged four years, having for some time last past dwelt in the parish of *Orton* aforesaid, being allowed so to do by reason of a certificate, bearing date the — day of — in the year of our Lord — under the hands and seals of *A. C.* and *B. C.* churchwardens, and *A. O.* and *B. O.* overseers of the poor of the said parish of *Penrith*, attested by *A. W.* and *B. W.* two credible witnesses, and allowed by *J. P.* and *K. P.* esquires, two of his majesty's justices of the peace for the said county of *Cumberland*, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of *Orton*: And whereas it appears to us, as well upon the oath of the said *John Thomson* as otherwise, that neither they, the said *John Thomson*, *Mary* his wife, *Thomas* and *Agnes* their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premises, it appears to us, and we do hereby adjudge, that the said *John Thomson*, *Mary* his wife, and *Thomas* and *Agnes* their children, are become chargeable to the parish of *Orton*, and that the place of the last legal settlement of them and every of them is in the said parish of *Penrith* in the said county of *Cumberland*: These are therefore to require you the said churchwardens and overseers of the poor of the said parish of *Orton*, or some or one of you, to convey the said *John Thomson*, *Mary* his wife, and *Thomas* and *Agnes* their children, from and out of your said parish of *Orton*, to the said parish of *Penrith*, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original: And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of *Penrith*, to receive and provide for them as inhabitants of your parish.

Given

Given under our hands and seals the ——— day of ——— in the year of our Lord ———.

Allowed by J. P. and K. P. esquires, two of his majesty's justices of the peace] *H. 9 An. R. v. Newton.* Order for removing a certificate person, not setting forth that it was allowed by two justices, but adjudging the parish which granted the certificate to be the place of the last legal settlement. — By Mr. J. *Probyn*: The order is good, for it sets out that the pauper came by certificate; and adjudges that he was actually chargeable, and that *Newton* was the place of his last legal settlement, he having gained no settlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good, if there had been no certificate. 1 *Seff. C.* 149. 2 *Bott.* 660. pl. 739.

Allowance sup-
plies attesta-
tion.

M. 7 G. Barleycroft. v. Coleoverton. Order of removal of a certificate person; it was not said that the certificate was attested, but only that it was allowed. But by the court: The attestation is by the statute made previous to the allowance; and therefore when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed. And the order was confirmed. 1 *Str.* 402. 2 *Bott.* 561. pl. 614.

A certificated
person must be
adjudged
chargeable.

And we do hereby adjudge] *T. 2 An. Maldon. v. Fleetwick.* An order was made, reciting, that whereas complaint hath been made unto us, that such a person, who is lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove: And quashed, for that there was no adjudication. 2 *Salk.* 530. 2 *Bott.* 659. pl. 737.

There must be
a complaint;
and adjudica-
tion of charge-
ability.

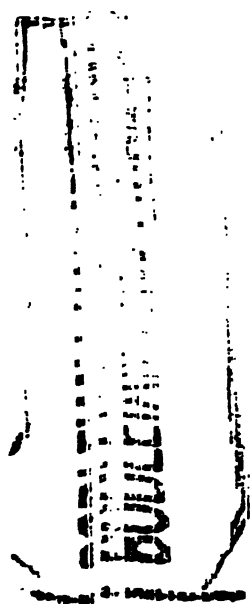
T. 15 G. 2. Great Bedwin v. Wilcot. Order of removal of a certificate person, in which there was no complaint of the churchwardens or overseers, nor any adjudication that the certificate person was actually become chargeable. On appeal, the sessions in pursuance of the 5 G. 2. amend the order in these particulars, as matter of form only, and insert in the said order such complaint and adjudication. And now the question was, Whether these amendments went only to matter of form, or to the substance and merit of the order? — By *Lee C. J.* There has been but one case in this court on this act since the making of it, and that was not determined: The present seems to be a very strong case against the power of amending. For there must be a complaint from the overseers, otherwise the justices have no power to remove; and a certificate person must be adjudged to be actually chargeable, otherwise he cannot be removed: And

And these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act, to take it so largely; and would be giving the sessions an original jurisdiction. And quashed by the whole court. 2 *Seff. C.* 142. *Str.* 1158. *B. S. C.* 163. 2 *Bott.* 714. *pl.* 839.

But after all, it doth not appear how it becomes necessary in the order of removal, to take any notice of the certificate at all, or to make any further use of it than as evidence to the justices of the settlement: And if it is not necessary to recite it, it is better to omit the same; because a misrecital, either in the date, or in the names of the persons, or in any other material part, will be fatal, for that then there will be no such certificate as is there recited, and the order must fall of course. And I do not see why the form may not be much more plain and simple, by drawing the same very little varied from the common form of an order of removal of other persons having no certificate. For if the order set forth that they are chargeable, in that case it is not at all material whether they have a certificate or not; for in both cases alike, they are then equally removeable. And if so, then the form may be this, both for a certificate person, and for a person having no certificate, who is actually become chargeable.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of Orton, in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith, in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid, in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, and that the said John Thomson, Mary his wife, and Thomas and Agnes their children, are now chargeable to the said parish of Orton: We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith, in the said county of Cumberland: We therefore require you the said churchwardens



selfes aggrieved with any such judgment of the said two justices, may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town-corporate or liberty, from which the said person was so removed."

And by the 8 & 9 W. c. 30. *The appeal against any order of removal of any poor person, shall be had, prosecuted and determined, at the general or quarter sessions of the peace for the county, division or riding, wherein the parish, township or place, from whence such poor person shall be removed doth lie, and not elsewhere.* f. 6.

In this place it may be proper to take notice of the case of *R. v. Yarpole*, M. 31 G. 3. Where it was determined, That on an appeal to the sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes, have not a right to vote. 4 T. R. 111. 2 Bott. 716. pl. 842.

Justices being interested.

All persons who think themselves aggrieved] E. 4 W. R. v. *Hartfield*. Two justices remove *Nicholas Wells* from the parish of *Hartfield* to the parish of *Prampfield*; from which order, *Wells*, the party himself, and not the parish, appealed. It was objected, that the party himself cannot appeal, because the appeal is only given to the parish aggrieved. — But by the whole court: The party may appeal as well as the parish. *Carth.* 222. 2 Bott. 716. pl. 843.

The pauper himself may appeal.

T. 4 G. R. v. *Almonbury*. An order of two justices was quashed at the sessions upon appeal, without saying, *at the appeal of the party grieved*. And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason, and that only, as *Pratt C. J.* declared, the order was confirmed. 1 Str. 96. 2 Bott. 717. pl. 845.

For the county, division or riding, from whence the removal was] *Watford v. Wendover*. E. 13 W. Two justices of *St. Alban's* remove a poor person to *Wendover*. *Wendover* appeals to the sessions at *St. Alban's*, where the order was confirmed. — By the court: The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non judice*. 2 Salk. 490. 2 Bott. 722. pl. 859.

In the case of *Malden*. M. 11 An. — By *L. Parker C. J.* Where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the same justice sitting who made the order. *Cases of S. 10.* 2 Bott. 725. (in n.)

East

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14th day of *January*, the sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the council, than the examination of the pauper, which was, That he was born in the parish of *Witheridge*, and about the age of seven years was bound to *Richard Elworthy* of *Witheridge*, with whom he lived till 21, and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship: That the said *Elworthy* gave him a discharge under his own hand: That after different services he gained a settlement by hiring and service under *Robert Salter*, in the parish of *Paddington*, if he was so far discharged by the above transaction as to be capable of gaining a settlement by hiring and service. — On the 10th of *January* the opinion was given; and was, “That if the indenture of apprenticeship remained in the master’s hands *uncancelled*, the apprenticeship still continued, and the agreement was no dissolution thereof, but only a licence to the apprentice to serve where he pleased.” On this day the officers of *Witheridge* told the officers of *Paddington*, that as the opinion was not decisive, they must inquire of the master what had become of the indenture. At the sessions on the 15th, no appeal to the order of removal was entered. At *Easter* sessions following, the parish of *Paddington* appealed, but the justices refused to enter into it, as not being in time: — Early in the term a *mandamus* was moved for on the ground, that, under the agreement, the opinion in favour of *Paddington* was conclusive, and that *Paddington* had appealed in consequence of objections raised to this decision *subsequent to the Epiphany sessions*, and therefore the statutable limitation of appeal to the *next* sessions ought, during the time the parties were under the terms of compromise, to be suspended: On the last day of term, cause was shewn, and the court being satisfied upon the fact, of the appeal having been prevented in consequence of the objection not having been raised *previous to the Epiphany sessions*. — By *L. Mansfield*: As both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, though the court does not quite agree with the council in point of law, they would not, had the opinion been positive, have granted the *mandamus*. Upon the point of law, I am opinion, that if the indenture had not been destroyed, but remained in the master’s hands, the apprentice would yet have gained a subsequent settlement in *Paddington*: The master received a guinea of his apprentice, then of full age, for the express purpose of vacating the indenture: Why, could the master after this, have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it. But the opinion of the counsel was hypothetical only, and upon a *statutory fact* at the

facts: The order of removal
justices on the 22d of *September*.
moved till the 5th of *October*.
pauper had been removed from
Northallerton, where the sessions
At which sessions no appeal
Epiphany sessions following, wh
January, *Hull* offered an appeal
hear it, thinking themselves b
statute, which directs the appe
On shewing cause it was insisted
had no jurisdiction; that an app
at the *Michaelmas* sessions, on
that no notice is necessary in or
enter their appeal, although if the
reasonable notice, the justices
hearing till the ensuing sessions
next sessions the statute meant
that here it was impossible for
appeal at the *Michaelmas* sess
made absolute for a *mandamus*.
pl. 869.

M. 30 G. 3. R. v. justices o
been obtained on the defendant
damus should not issue, comman
neal against an order of removi
the 18th of *April*: on th

a meeting of the inhabitants, in order to take their opinion upon the subject whether there were any grounds for the appeal, the *Midsummer* sessions were the next possible sessions. — *L. Kenyon C. J.* The words of the act of parliament are very strong; and they require the appeal to be made at the sessions next after the grievance. Where indeed an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this court has interfered by granting a *mandamus* to compel the justices at the following sessions to receive the appeal; because the words "next sessions" mean "the next possible sessions." But this is a very different case; for there were two intervening days after the execution of the order, and before the *Easter* sessions; and if there were not sufficient time before those sessions, to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to 9 G. c. 7. s. 8. The other judges concurred. Rule discharged. 3 T. R. 504. 2 Bott. 727. pl. 870.

(c.) Of adjournment.

R. v. Langley. T. 11 W. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another and so the determination upon the appeal was not at the next quarter sessions. — But by the court: the appeal must be lodged at the next quarter sessions, but when it is lodged, the justices may adjourn it. 2 Salk. 605. Comb. 365.

Appeal may be adjourned.

But where the sessions itself is adjourned, the style of the sessions ought not to run at such a sessions held by adjournment, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further time by adjournment: As in the case of

Style of the sessions where they are adjourned.

R. v. Hinderclaves. An order made at the general quarter sessions of the peace held by adjournment was quashed, because it did not appear that this was the next general quarter sessions, for it might be that the sessions was begun, and continued by adjournment before the order was made. 19 Vin. 356. 2 Bott. 723. pl. 862.

T. 10 G. 2. *Heptonstall v. Errendon.* The sessions was said to be holden on such a day by adjournment, and it did not appear when the original sessions was holden. And the order was quashed for that cause. B. S. C. 88. 2 Bott. 731. pl. 877.

H. 20 G. 2. *R. v. Pollstead.* Appeal was made to the quarter sessions in *Sussex*, held April 7, 1746, against an order of removal. The sessions was adjourned to April 9th,

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Woodbridge, where for want of a sufficient number of justices nothing could be done. April 11th, a sessions is held at Ipswich, and adjourned to the 14th at Bury, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at Woodbridge. And of that opinion was the court; for the words in the 2 H. 5. c. 4. *and more if need be*, were never considered as giving more than original sessions in a quarter, but only empowering adjournments. The county must take notice of adjournments, and are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed. 2 Str. 1263. tit. 732. pl. 880.

22 & 23 G. 2. *West Torrington v. North Thoresby*. A sessions was held at Kirton; and from thence adjourned to Caister, at which place no sessions was held pursuant to the said adjournment. Afterwards a sessions was held at Horncastle; and the appeal was heard and determined there. — By the court: The sessions at Horncastle did not take up the appeal, for want of jurisdiction. After sessions must be holden four times in a year, as directed by the statute; and it may be adjourned from time to time, and from place to place: But if it is once opened, it cannot be resumed. B. S. C. 293. 2 Bott. 742.

5. (d.) *Of notice of appeal.*

For notice of appeal, and time of appeal against an order of removal suspended, see *ante*, this sect. 2. (i.) 49 G. 3. c. 104. s. 2.

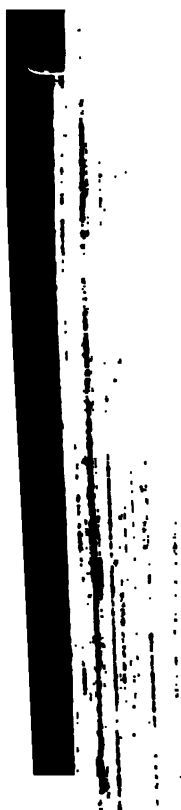
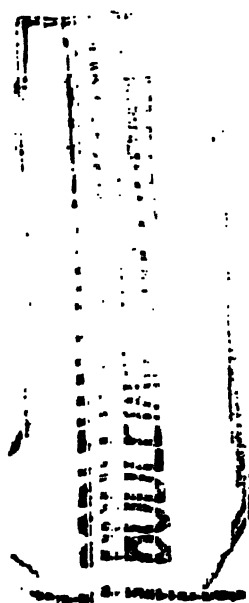
No appeal from any order of removal shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing, unto the churchwardens or overseers of the parish or place from which the removal shall be; the reasonableness of which notice shall be determined by the justices at the quarter sessions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next quarter sessions, and then and there finally determine the same. 9 G. c. 7. s. 8.

Reasonable notice] *R. v. J. of Huntingdonshire*, E. 23 G. 3. Upon a removal of a pauper by two justices, the notice of appeal was served upon a Sunday: had the appellants deferred the service of their notice till another day, they would not have been in time, under the practice established in that court, to have given reasonable notice for the purpose of trying the merits of the appeal. The sessions (being of opinion that the party aggrieved was not at any rate or for any purpose entitled to appeal, unless the prescribed notice had previously been given; and also, that a service of a notice on a Sunday was not a legal service, and that in point of law there had not been any notice) refused to hear, adjourn or enter the appeal. — A rule was obtained to shew cause why a mandamus should not issue, directing the justices to receive and hear the appeal; and no cause being shewn, the rule was made absolute. *Cald.* 283. 2 *Bott.* 719. pl. 852.

R. v. the J. of Gloucestershire. On a motion for a mandamus to compel the justices of the quarter sessions of Gloucestershire to receive an appeal against an order of removal; it appeared from the affidavits, that the examination of the pauper was taken in August; the order of removal the 12th of November following; and the sessions where the appeal was tendered, held on the 12th of January in the ensuing year: that no notice of appeal had been served (for which the reason assigned was, that the appellants had not been able to get their witnesses ready till it was too late to give such notice); that the court had been moved to receive the appeal, and adjourn the consideration of it till the following sessions, and had refused. — The court was clearly of opinion, that the justices ought to have received the appeal, and the rule for a mandamus was made absolute. *Doug.* 182. 2 *Batt.* 727. pl. 868.

Notice of appeal.

Sessions are bound to receive an appeal altho' no notice has been given.



and there to hear and determine the matter of the said appeal.—Afterwards there was, on the part of the defendants, no opposition to making the rule absolute; they considering that the case of *R. v. the J. of the north riding of Yorkshire* had been overruled in the subsequent case of *R. v. J. of Bucks (both ante)*. — And Lord *Ellenborough* said, that the latter case had been well considered, and that the court were satisfied that the statute was compulsory on the sessions in these cases to receive and adjourn the appeal. Rule absolute. 7 *E. R.* 549.

R. v. J. of Wiltshire. M. 49 G. 3. This was a rule calling upon the defendants to shew cause why a writ of mandamus should not issue, commanding them to enter continuances upon the appeal of the inhabitants of *Stourton in Wiltshire*, against an order of removal from *Mere* to *S.*, and to hear and determine the said appeal. — This was founded on an affidavit of the appellant's attorney, living at *Wincaunton in Somerset*, by which it appeared that he was applied to by the parish officers of *S.* on the 19th of *April* last, to enter the appeal and get it respited until the next sessions, in consequence of which, notice of appeal and of the intended motion to respite was given to the respondents. That the next sessions was held on the 26th of *April*, when the appeal was entered and respited to the *Midsummer* sessions, which was held at *Warminster* on the 12th of *July*. On the 2d of *July* the appellants' attorney learnt for the first time that the sessions had made certain rules for their practice, which were not published till after the *April* sessions, nor acted upon or officially circulated till the *Midsummer* sessions, by which it was required that on all trials of appeals, the notice of trial was to be given on or before the *Monday* in the week next before the sessions, otherwise the notice to be deemed insufficient, and that the like notice was to be given in the case of respited appeals, unless, &c. — That on *Tuesday* the 5th of *July* notice of trial of the appeal was served on the respondents at 6 o'clock in the morning, dated the day before, being as soon as the signatures of the parish officers could be obtained. That the usual notice theretofore required in such cases in this and the neighbouring counties was given in this case. That the appellants' attorney attended the *Midsummer* sessions on *Tuesday* the 12th of *July*, and on the next day the appeal was called on, when the respondents objected that the notice had not been given in time. That the appellants then applied to the court for an adjournment under the circumstances, offering to pay the costs of the day; but the court refused it, thinking they had no power to do so.—Affidavits were also read in answer to this rule, alledging that the new order of practice was made

The sessions have power to judge of the reasonableness of the notice; and if they be wrong the court of K. B. will interfere.

at the preceding *January* sessions held at *Devizes*; and that notice of it was immediately after promulgated in the county. That the appellants' attorney lived only five miles from *S.* though in the county of *Somerset*; and that the litigating parishes were very near to each other. — Lord *Ellenborough* Ch. J. The magistrates certainly had a discretion to exercise with respect to what was reasonable time for giving the notice of appeal; but we have also a kind of visitatorial jurisdiction over them in the exercise of such a discretionary power; and we think that in this case they have not exercised that discretion in a way that we ought to give effect to; but that we ought to interfere and correct it. Here it appeared that a new rule of practice with respect to giving notice had been recently made by the sessions, of which the appellants' attorney had no knowledge, but he conformed himself to the former practice; and, under these circumstances, it would be too much to conclude the appellants from having their case heard. Rule absolute. (Though by the 13 & 14 C. 2. c. 12. the appeal was to be lodged at the next quarter sessions, yet when it was so lodged, the justices might have adjourned it *toties quoties* the purposes of justice required. — Vide the case of *R. v. Lumley* parish, 2 Salk. 605. And there is nothing in the 9 G. 1. to restrain their general power in this respect, but rather to compel the adjournment if the first notice has not been given. Vide *R. v. J. of Bucks*, and *R. v. J. of Shropshire*.) (Mr. *East*'s note.) 10 E. R. 404.

Although it is not expressed in the act, that this notice shall be in writing, the court will better judge of the reasonableness of it, if it shall be in writing: And it may be thus:

TO the churchwardens and overseers of the poor of the parish of — in the county of —.

This is to give notice to you and every of you, that we the churchwardens and overseers of the poor of the parish of — in the county of — do intend at the next quarter sessions of the peace to be holden for the said county of — to commence and prosecute an appeal against an order of J. P. and K. P. esquires, two of his majesty's justices of the peace of the said county of — for and concerning the removal of — to our said parish of — Witness our hand this — day of —

A. B. }	Churchwardens.
C. D. }	
E. F. }	Overseers of the poor.
G. H. }	

6. Of the effect of an order of removal, unappealed against; and herein,

- (a.) How far it is final.
(b.) Of what facts it is conclusive.

(a.) How far an order of removal is final.

H. 12 An. Malendine v. Hunsdon. Two justices by an order send some poor persons to *Hunsdon*. Two justices there by an order send them back again. — By the court: They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it. *Fol. 273.*

Order not appealed against is final; and there can be no second order reversing the first, excepting by appeal.

T. 12 W. Chalbury v. Chipping Farringdon. A person was removed, by order of two justices, from a parish in *Warwickshire* to *Chalbury* in *Oxfordshire*, from thence by order of two justices to *Chipping Farringdon* in *Berkshire*: It was objected, That *Chalbury* ought to have appealed, and got the order upon them discharged. Which *Holt Ch. J.* agreed: For sending the man to another place is falsifying the first order, which cannot be done but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed. *Chalbury* should have appealed from the *Warwickshire* order, and got that set aside, and sent the man back thither; and the justices there should have sent him to *Chipping Farringdon*. Therefore the latter order was nought. *2 Salk. 488. 2 Bott. 684. pl. 796.*

Sutton St. Nicholas v. Leverington. T. 21 & 22 G. 2. Removal from *Sutton St. Mary's* to *Leverington*: And no appeal: And the sessions confirmed the original order, though not appealed from. Four months after the first order, a second original order was made to remove the pauper from *Leverington* to *Sutton St. Nicholas*; which second original order was confirmed by the sessions upon appeal. — By the court: The second original order, and the order of sessions confirming it, were quashed, and the first original order was confirmed; for *L.* was bound by the first original order unappealed from, unless some subsequent settlement appears, and four months is not a sufficient distance of time, whereupon to ground a presumption of having acquired a new settlement. And the order of sessions, confirming the first original order, was quashed, as being a voluntary and extra-judicial act of the sessions, to confirm an order which was not complained of. So also was done in *Godalmin v.*

The original order is, when unappealed from, conclusive.

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Michael's Winchester. 13 G. 2. B. S. C. 276. 2 Bott. 715.
140.

But in the case of *R. v. Swalcliffe.* H. 23 G. 3. *Thomas*
okins and *Mary* his wife were removed from the parish
swalcliffe to the parish of *Stourton*. The sessions quashed
order, and stated specially: That the pauper was born
walcliffe; that in Jan. 1782, he was removed from *Swal-*
to *Ascott*, a large populous village, part of the parish
Whichford, and maintaining its poor in common with
ichford; *Ascott* did not appeal, and *Swalcliffe* filed the
r at the *Epiphany* sessions 1782, for safe custody. The
per and his wife coming again into *Swalcliffe*, and not
ng acquired any subsequent settlement, *Swalcliffe* ob-
ed the first mentioned order, and sent the paupers to
erton, where he had gained a settlement by hiring and ser-

— It was contended, that the order of removal to
it being unappealed from, was, as to the pauper's set-
ent in the parish of *Whichford* as including *Ascott*, in-
lusive judgment. In reply it was insisted, that though
order of removal unappealed from is conclusive when
sted to a place to which a removal can legally be made,
where there is to be found some person legally autho-
d to appeal; yet that here were no officers to act:
t to admit to do a thing which was impossible to be done,

Sect. XIX. (6.b.)] (*Removal.*)

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officers of *Llanrhydd* consented to take the paupers back to their custody, without giving the parishioners of *Ruthin* the trouble of appealing. Afterwards, in *January 1769*, two justices (Mr. *Yale* and Mr. *Price*) removed the same paupers from *Llanrhydd* to *Denbigh*. And upon appeal their settlement was found to be at *Denbigh*. But it appearing in evidence on the behalf of the parish of *Denbigh*, that the former order made by Mr. *Middleton* and Mr. *Jones* for removing them to *Ruthin* had not been appealed against, the court were of opinion, that the said order of removal from *Llanrhydd* to *Denbigh* ought to be quashed, and was quashed accordingly. — It was moved to quash the order of sessions; and urged, that though the principle upon which they grounded their opinion is in general right, namely, that an order of removal submitted and not appealed from, is conclusive upon the non-appealing parish, as against all the world; yet this general rule is to be understood to relate only to a subsisting order, but not to a deserted one; and therefore the sessions have mistaken in applying this general principle to the particular case of the present order for removing the paupers from *Llanrhydd* to *Ruthin*, which being found to be a wrong one, was by consent of both parties concerned it, abandoned and deserted and the paupers taken back again by the parish in whose favor it was made; and was consequently at an end, and must be considered as if it had never existed. On the other hand it was insisted, that it was not in the power of private persons to put an end to the order for removing these paupers to *Ruthin*, whilst an appeal was thus going on against it. The order has removed them to *Ruthin*, and *Ruthin* has not appealed. Consequently, *Ruthin* is concluded, as against all other parishes to dispute their belonging to *Ruthin*. — By L. *Mansfield*. That order was made in favor of *Llanrhydd*, *Llanrhydd* gave it up, and consented to take the paupers back, without giving *Ruthin* the trouble of appealing against it. May not a party give up a judgment intended for his own benefit? And the order of sessions was quashed, and the order for removing the paupers from *Llanrhydd* to *D.* affirmed. *B. S. C. 658. 2 Bott. 686. pl. 890.*

(b.) *Of what facts it is conclusive.*

E. 5 G. 2. R. v. Northfeatherston. Two justices made an order, by which they removed a man, his wife, and four children, naming them, to *Featherston*; and there was no appeal. Afterwards *Featherston* found out that this woman was not the wife, for that the man, though married to her, was married before to another woman, and consequently the second marriage totally void. And they removed the woman

On order of removal unappealed against is conclusive of the facts stated in it.

man by her maiden name to *Horfington*, and the four children thither as bastards. *Horfington* appealed, and the sessions upon hearing the matter stated specially, that this woman and the four children were the same with the woman and children removed by the first order, and gave judgment that the first order was conclusive, and thereupon quashed the said second order. — And by the court: They have slipped their opportunity, and the first order not appealed against is conclusive. 1 *Seff. C.* 154.

M. 16 G. 2. Nympsfield v. Woodchester. In 1731, a man and his wife were removed from *Nympsfield* to *Woodchester*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now sent from *Nympsfield* to *Woodchester* together with the father. And upon appeal as to the children, it was offered to give in evidence, that the man had a former wife, and consequently the children born at *Nympsfield* were as bastards settled there. The sessions refused to let *Woodchester* go into this evidence, being of opinion that *Woodchester* was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. — The court, on debate, confirmed both orders: For the marriage being established by the first order, the settlement of the children (which is derivative) follows of course, and can no way be impeached, but by entering into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order unappealed from is conclusive. 2 *Str.* 1172. *B. S. C.* 191. 2 *Bott.* 685. pl. 798.

R. v. St. Mary, Lambeth. E. 26 G. 3. The pauper (with her three children) was removed as *Eliz.* the wife of *W. T.* from *St. Mary, Lambeth*, to *Huntspill*: and the sessions confirmed the order as far as related to *Eliz.* but quashed it as to the children. And they stated specially, that the pauper *Eliz.* in 1784 was removed from *Stoke-under-Hampden* to *Huntspill*, with, and as the wife of a man to whom before that time she had been married: which order was unappealed from. The appellants offered to give in evidence, that the pauper *Eliz.* had been married to *W. T.* illegally, he then having a former wife, and which wife was still living; the children were born of the pauper *Eliz.* during her cohabitation with *W. T.* and the court said, that an order of removal unappealed against is conclusive, not only on the persons removed; but also, on all derivative settlements from them. Order of sessions confirmed as to the wife, and quashed as to the children. 6 *T. R.* 615. 2 *Bott.* 695. pl. 809.

H. 6 G. 3. Silchester v. Enborn. Two justices removed *George Wise* and *Jane* his wife from *Newbury* to *Enborn*, and their

If two be removed as man and wife, it is conclusive of that fact, if the order be not appealed against, and after-born children claiming settlement from the father and mother, are also concluded as to the fact of marriage.

So also, it is conclusive on all all derivative settlements.

Where two are removed as man and wife, and the

the order was not appealed against. Afterwards, the parish of *Enbarn*, finding that *Jane* was not the wife of *George Wise*, two justices remove her, by the name of *Jane Moor*, a single woman, from *Enborn* to *Silchester*. *Silchester* appeals. And on hearing the appeal, it was proved, that the said *Jane* never was married to the said *George Wise*. And therefore the sessions affirmed this order of the justices. — But by the court: The sessions' order must be quashed. They said, that whatever the hardship might be in this particular case, or how doubtful soever this question might be if it were *res integra*; yet its being fully settled was a reason for them not to depart from it now. For that *stare decisis* was always a good rule; and never more so, than in cases of settlements of paupers, where it would make the utmost confusion if they should overturn settled determinations, which the justices all over *England* had been used to look upon as the rules of their conduct in similar cases. If she was not his wife, it might have been controverted. But, as they have neglected to appeal, when they had a proper opportunity to shew it, they are estopped to say so now. *B. S. C. 551, 2 Bott. 686, pl. 799.*

order not appealed against, it is conclusive of the fact of marriage against the parish receiving them.

Southowram v. Northowram. *Elizabeth Booth*, widow, and her three children, were removed from *Southowram* to *Northowram*. On the appeal the sessions stated, that it appeared by the evidence of *William Booth*, (father of *Jeremiah*, late husband of the pauper), that the said *William* and *Jeremiah* were born and settled at *Halifax*, but it did not appear that *J.* had done any act to gain a settlement; that on the 6th of *April 1774*, the said *William Booth* and his wife, but not any of their children, were removed from *Halifax* to *Northowram*, who received the two paupers, and did not appeal. That *Jeremiah* and *Elizabeth* the pauper were married some years before the removal of *William* and his wife, and had those three children; and *J.* from the time of his marriage until his death, lived at *H.* in a house he rented, independent of his father, and was not removed by or mentioned in the order, nor was then any part of his family. The sessions discharged the order, subject to the opinion of the court, Whether the settlement of *E. B.* and the said three children was by inference to be deemed at *Halifax*, or to follow the settlement of the father to *Northowram*? By the court: the order of removal unappealed from, is conclusive as to the father and mother, but not as to the son, because he is not mentioned in it, and the sessions have expressly found, that the son was settled at *Halifax*. Order of sessions confirmed. *4 T. R. 353. 2 Bott. 691. pl. 806.*

Order unappealed against, is only conclusive as to those who are mentioned in it, and removed.

R. 1

Where the pauper is removed by the name of E. S. widow.

R. v. Rudgeley. T. 40 G. 3. Removal of *Emanuel Smith*, and *Elizabeth* his wife, from *Aston Trussell* to *Rudgeley*, and confirmed by the sessions. In 1727, by a certificate to *Aston Trussell*, *Rudgeley* acknowledged the father of *Emanuel Smith*, and *Emanuel Smith* (the pauper) to be their parishioners: afterwards the son married the pauper *Elizabeth*. And in 1799, *Elizabeth Smith* was removed by the name and description of *Elizabeth Smith*, "widow," from *St. George, Hanover-square*, to *Aston Trussell*; and against that order there was no appeal. And it was said in support of the order of sessions, that this was not a removal of *Emanuel Smith*, nor of his wife, as the wife of *Emanuel Smith*, but simply of *Elizabeth Smith* widow, and that therefore the parish of *Aston Trussell* had no notice of the ground on which the order of removal would be disputed. — But *Grose J.* said, that this order was conclusive as well as in the case of a removal of one as wife; for that this description imported that she was removed to a parish where her husband had gained a settlement, at least it put that question in issue, and therefore it behoved the parish, to which the removal was made, to inquire how that settlement was gained. This would have been an object of inquiry on an appeal against that order; but as that parish did not then litigate the question, the court were bound according to all the authorities to determine that the former order of removal is conclusive, and that not as to her only, but as to the husband likewise. And *Lawrence J.* agreed, and also said that the description 'widow,' raised a presumption, that she was removed to the place where her husband was settled. — *Le Blanc J.* was of the same opinion, and said that the cases of *R. v. Silchester*, and *R. v. St. Mary, Lambeth*, shew that an order of removal unappealed from is conclusive, though the party be removed by a wrong addition; for in both those cases the woman was removed as the wife, though in fact she was not the wife, yet it was holden that the parties were precluded by the orders from disputing the settlements again upon subsequent removals. That the result of all the cases seemed to be this; an order of removal unappealed against is conclusive; an order of removal of a woman, though not as wife, is conclusive of the settlement of the husband, as well as the wife; and the circumstance of the party being removed under a wrong description, does not take the case out of the general rule. Both orders quashed. 8 T. R. 620. 2 Bott. 697. pl. 811.

Marriage.

R. v. Binegar. E. 46 G. 3. On appeal by the parish officers of *Binegar* in *Somerset*, against an order removing *Elizabeth Savage*, otherwise *Walters*, by the name of *E. S. Savage*

single woman, from *Midfomer Norton* in the same county, to *Binegar*, the order of removal was affirmed by the sessions. On the 25th of *April* 1793, by order of two justices made on the complaint of the parish officers of *Kilmerston*, it was complained and adjudged as follows, viz. "That *John Savage* labourer, and *Betty his wife* (the said *Betty* being the pauper removed), lately came and intruded themselves into the parish of *Kilmerston*, endeavouring there to settle as inhabitants thereof, contrary to law, not having any way acquired a legal settlement therein, and are likely to become chargeable thereto, we do, upon due examination adjudge the said complaint and premises to be true; and we do further, upon the complaint of the said *Betty*, the wife of the said *John Savage*, taken upon her oath, adjudge that the said *J. S.* and *B.* his wife, were last legally settled in the said parish of *Midfomer Norton*." The said *Betty* was removed from *K.* to *M. N.* and no appeal. On the 20th of *July* 1799, by another order of two justices made on the complaint of the parish officers of *Wellow*, in the said county, it was complained and adjudged as follows; viz. "That *Elizabeth Savage*, (the pauper) lately came to inhabit in the said parish of *Wellow*, &c. and that the said *Elizabeth Savage*, is actually chargeable, &c. we, &c. upon examination, &c. and also upon the examination of the said *E. S.* upon, &c. do adjudge, &c. to be true, and we do adjudge that the place of the last lawful settlement of the said *E. S.* is in the said parish of *M. N.*" And no appeal against this order. At *L. D.* 1803, the said *E. S.* hired herself and served a year with *J. B.* of *Binegar*. The said *John Savage* is still living. After she left this service she returned to *M. N.* and became chargeable to that parish. In *May* 1805, *J. S.* was committed to the house of correction for having run away and left the said *E.* therein called *his wife* so chargeable; after this he was at the sessions convicted of having so done, and was sentenced accordingly. The respondents produced evidence to the court, that a marriage solemnized between the said *J. S.* and the said *E.* before either of the said orders of removal were made was a nullity, and the nullity of such marriage was not disputed. The question for the opinion of the court was, Whether or not the respondents were estopped either by the former orders of removal; or by the adjudication of the said *J. S.* to be a vagrant for running away and leaving the said *Betty*, who is in such adjudication considered as *his wife*, from giving any evidence whatever to prove the said marriage a nullity. In support of the order of sessions, the second order, treating *Elizabeth Savage* as a single woman, was laid out of the case. And

also the order of vagrancy was considered as an *ex parte* proceeding, and therefore not conclusive of the fact of marriage. And it was stated, that it did not appear that the parties ordered to be removed were within the jurisdiction of the removing magistrates; it only stated, that the paupers lately came into the parish of *K.* not that they were then in the parish at the time of the order made. [L. *Ellenborough C. J.* The order states and the magistrates adjudge it to be true, that the paupers are likely to become chargeable to the parish, which could not be, if they were not in the parish at the time.] Then it was urged that here was no adjudication of a present settlement, only that the paupers were last legally settled in *M. N.* [L. *Ellenborough C. J.* said, that it referred to the time of the complaint made and the court could not intend an intermediate settlement between the hearing of the complaint and the making of the order of removal.] And the court considered the first order of removal as good upon the face of it, and conclusive of the question of marriage, which was involved in the judgment of the justices. Orders quashed. 7 *E. R.* 377.

An order of removal unappealed against, is conclusive of the place of settlement up to that time.

T. 28 G. 3. R. v. Kenilworth. *Thomas Byfield*, his wife and children, were removed from *Birmingham* to *Kenilworth* in *Warwickshire*. The sessions confirmed the order, and stated the following case: That the pauper was born and settled in *Kenilworth*. On 10th *May* 1765, he was hired for a year to *J. Chatterton* of *Birmingham*, and that day entered into his said service, and continued in the same in *Birmingham* until 1st of *April* 1766, when he was taken up on a charge of bastardy, and married the next day. His master did not make any complaint against him, nor discharge him from his said service. On the 3d of the said *April*, he was removed from *Birmingham* to *Kenilworth*, where he remained until the 7th of *April*, and then returned back to *Birmingham* into his said master's service, who willingly received him again, and he continued in his said service till the end of the year, and received his full year's wages. The order of removal was not appealed against.—*Buller J.* There is no proposition in the law of settlements more clear than this, that an order of removal unappealed against is conclusive against all the world; and this is so clearly and universally established that it ought never to be impeached. At the same time the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement; and the order was confirmed. 2 *T. R.* 598. 2 *Bott.* 807. pl. 692.

In *R. v. Corsham. T. 49 G. 3.* The pauper was removed from *East Moulsey* to *Corsham*; and it was confirmed by the sessions, who stated, that on the 9th of *April* 1807, he

he had been removed from *Charlton* to *Garston*, and no appeal had been entered against that order; which removal was subsequent to a settlement he had gained in *Corsham*. — And the court held, that this order of removal unappealed against, was conclusive as to the settlement of the pauper at that time, even upon a question of settlement between the two present contending parishes, and they quashed the order of removal to *Corsham*. 11 E. R. 388.

7. Of the effect of confirming or quashing orders of removal; as,

- (a.) Upon the merits.
- (b.) Quashing for form.

(a.) Upon the merits.

M. 13 W. Mynton v. Stoney Stratford. — By *Holt Ch. J.* and the court: If on appeal to the sessions an order be discharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties, for it is an adjudication that this is the place of the party's last legal settlement. 2 Salk. 527.

Order confirmed upon the appeal is final; but an order discharged binds only the parties.

M. 6 G. Little Bitham v. Somerby. A person is sent by order of two justices to *Somerby*, as the place of his last legal settlement. *Somerby* appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, *Somerby* sends him to a third place. — By the court: An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world; and therefore no new settlement appearing, the order of removal from *Somerby* must be quashed. 1 Str. 232.

M. 10 W. Harrow v. Rifelip. A person comes into *Harrow*, and being likely to become chargeable, was removed to *Rifelip*. *Rifelip* appealed; and upon the appeal he was adjudged to be settled at *Rifelip*. Afterwards *Rifelip* discovered, that *Hendon* was the place of his last legal settlement, and sent him thither; and the question was, Whether, after the adjudication upon the appeal, *Rifelip* was not estopped against all the world, to say, that *Rifelip* was not the place of his last legal settlement. — By *Holt Ch. J.* *Rifelip* is estopped to say otherwise; for if *Rifelip* had not been the very place of his last legal settlement, the justices must have sent him back to *Harrow*, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to *Rifelip*. And now this is in effect the same

An order of removal confirmed, is conclusive of the then place of settlement.

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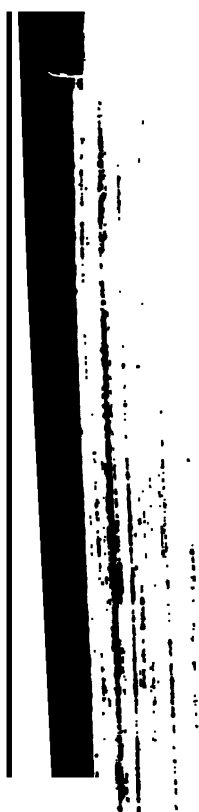
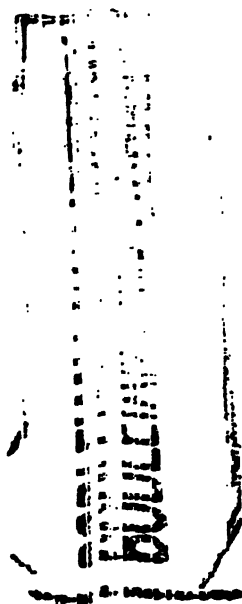
E. 19 G. 2. Osgathorpe v. Diseworth. A person was removed by order of two justices from *Diseworth* to *Osgathorpe*; which order on appeal was discharged. He was by a second order sent from *Diseworth* to *Osgathorpe* as a certificate-man; and upon an appeal it was stated, that the first removal was before he became chargeable, and the second after he became so; and the sessions were of opinion that the first determination was not final between the parishes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it hath been determined, that a reversal is final between the parties.—But by the court: So it would be if the special matter did not appear: a certificated person cannot be sent back, until he is actually a charge: a removal before is premature: The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed. 2 *Str.* 1257. 2 *Bott.* 703. *pl.* 820.

But special matter may be set forth by the sessions upon the second appeal, which may prevent the first order from being final.

H. 8 G. 2. Cirencester v. Coln St. Aldwin's. The pauper was removed from *Minety* to *Coln St. Aldwin's*; and on appeal the order was reversed. Afterwards he was removed from *Cirencester* to *Coln St. Aldwin's*. The former removal was on complaint of the parish of *Minety*; the latter on complaint of the parish of *Cirencester*: The parish to which the pauper was sent on both complaints was *Coln St. Aldwin's*. On appeal against this latter order, the sessions quashed the same, because they thought the first order conclusive.—By the court: An order confirmed binds all the world; but when discharged, it is binding only between the parties concerned. For the discharge of the order doth not determine where the pauper is settled; but only, that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him.—And *L. Hardwicke C. J.* said, He took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes. And this distinction is reasonable; because a third parish may be able to give better evidence than the other could. And this latter order of sessions was quashed. *B. S. C.* 17. 2 *Bott.* 702. *pl.* 818.

Order confirmed on appeals conclusive on all the world, but if quashed, is conclusive only between the parties.

E. 30 G. 2. Bentley v. Baxterly. The pauper was first removed from *Baxterly* to *Stourbridge*; which order, on appeal, was discharged. Then *Baxterly* removed to *Bentley*; and *Bentley*, upon appeal, offered to give evidence, that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*: The sessions refused to hear this evidence, because



have been removed a second time, because the first warrant and judgment having been quashed as before mentioned, was binding between the said two parishes, and therefore ordered the last warrant and judgment of 25th Jan. 1795 to be quashed. — L. Kenyon C. J. said, that as the first order in this case was quashed for defect of form, which appeared by the minute of the sessions, it was essentially different from the cases cited, where the order was quashed generally, which must be taken to be on the merits. And it is undoubtedly law, that if an order of removal be quashed for form, it does not conclude the parties. Order of sessions quashed. 6 T. R. 613. 2 Bott. 706. pl. 824.

By the aforesaid statute of the 13 & 14 C. 2. it is expressed, Sessions to proceed upon the merits. that the justices, upon the appeal, shall do to the parties justice according to the merits of their cause.

And by the 5 G. 2. c. 19. On all appeals to the sessions Defects of form to be amended. against the judgments or orders of any justices of the peace, the justices there shall cause defects of form to be rectified and amended, without any cost to the party, and after such amendment shall proceed to hear the truth and merits of the cause. l. 2.

H. 39 G. 3. R. v. Chilverscoton. W. Fennel and his wife and children were removed from Sow to Chilverscoton; the sessions confirmed the order, and stated the following case: The pauper was born about 55 years ago in Sow, but was settled in Chilverscoton. In 1779 he married his present wife in Bedworth, where he then resided; they were afterwards removed to Sow by the following order: "To the church-wardens and overseers of the poor of the parish of Bedworth in the county of Warwick, and to the church-wardens and overseers of the parish of Sow in the county of the city of Coventry; Whereas complaint has been made by you the churchwardens and overseers of the poor of the said parish of Bedworth unto us whose hands and seals are hereunto set, two of his majesty's justices of the peace (whereof one is of the quorum,) for the county aforesaid; that W. Fennel, E. his wife, &c." [The other parts of the order were in the regular form, and it was dated 16th March 1779. There was no county mentioned in the margin of the order.] Against this order there was no appeal. Afterwards in May 1779, a certificate was granted by Sow to Bedworth, acknowledging the said pauper and his family to be settled in Sow, but at the time of granting this certificate no settlement had been gained in Sow, unless the above order of removal from Bedworth to Sow had conferred one; but the pauper's settlement had always continued at Chilverscoton. The question before the court was, Whether the above order of removal from Bedworth to Sow unappealed from, were good and binding, or defective and void. — L. Kenyon C. J.

It is now too late to discuss one of the points made at the bar, namely, Whether or not the sessions could amend in this case, it having been decided in *R. v. Great Bedwin* (a), that the sessions can only amend mere defects or wants of form. I verily believe that if the legislature had been asked what was their intention when they passed the 5 G. 2. c. 19. they would have said they meant, that if upon inquiry it appeared that the pauper had been removed to his proper parish, the sessions would have power to correct all defects in the order: but the decision to which I before alluded was made ten years after the passing of the act, and at a time when L. Ch. J. *Lee*, who was peculiarly conversant in sessions law, presided here. And though I lament that that decision was made, because it renders the statute of little avail, yet it has been acted upon ever since, and it is important to adhere to determinations respecting settlements. Then is this an objection of form or of substance? It certainly is a matter of substance. It should appear upon the face of the order, that the justices who made it had jurisdiction; which if they had, every fair presumption will be made that they decided rightly; but if they had not, the proceeding is a nullity. It is said, however, that the parish of *Sow* ought not to be permitted, at this distance of time, to object to the order; but there is a maxim that *quod ab initio non valet tractu temporis non convalescet*. And as this order was void at the time when it was made, because it does not appear that the justices who removed had any jurisdiction, it cannot have become a valid order by the time that has since elapsed. The general proposition indeed, that an order of removal unappealed against is conclusive on the parish to which the removal is made, cannot be shaken; but it must be understood as part of that proposition, that the order is not a nullity, but was made by two justices having jurisdiction to make it. The case of *R. v. Stepney* (a) is, I think, decisive of the present. — *Lawrence J.* expressing some doubt on the subject, the case was not then finally decided; but afterwards L. *Kenyon* said, that after considering the cases cited, and upon the authority of *R. v. Stepney*, and *R. v. Bedwin*, we are of opinion that the former order was a nullity; and though it was not appealed against, it is conclusive on the parish of *Sow*. — Order of sessions confirmed. 8 T. R. 178. 2 Bott. 695. pl. 810.

M. 42 G. 3. *R. v. Moor Critchell*. Two justices removed *D. Spearing*, his wife and children, from the parish of *Donhead St. Mary* in the county of *Wilts*, to that of *Moor Critchell* in the county of *Dorset*. The sessions on appeal, confirmed the order: But both orders being removed by *certiorari* into this court, a rule was obtained, calling on the

(a) *Ante*, under this head.

parish officers of *Donhead St. Mary* to shew cause why they should not be quashed, for a default of jurisdiction in the magistrates, making the original order apparent upon the face of it, in not stating them to be justices of the peace of the county of *Wilts*. The order was in this form: "*Wilts* to wit.—To the churchwardens and overseers of the poor of the parish of *Donhead St. Mary* in the county of *Wilts*, aforesaid, to remove and convey, and to the churchwardens and overseers of the poor of the parish of *Moor Critchell*, in the county of *Dorset*, to receive these.—Whereas complaint hath been made by you, the churchwardens, &c. of *Donhead St. Mary*, in the county of *Wilts*, aforesaid; unto us whose hands and seals are hereunto subscribed and set, being two of his majesty's justices of the peace in and for the said county, (one whereof is of the *quorum*,) that *D. Spearing*, &c. are come to inhabit, &c. (pursuing the usual form of such orders.)" On cause being shewn, it was contended, 1st, That the words "justices of the peace in and for the said county," must have reference to the county in the margin, which is *Wilts*: 2dly, That it has reference in grammatical construction to the last antecedent county mentioned, which is also *Wilts*: And further, that from the whole scope of the order, it appears that it could only have been made by magistrates of *Wilts*, and not of *Dorset*. The court, however, were clearly of opinion, that the objection, was fatal. It ought expressly to appear that the justices had jurisdiction to make the order, and therefore there having been two counties mentioned before, they ought to have stated of which county they were justices. But *L. Kenyon* added his regret that the objection had been taken, as the decision would conclude nothing; for the court would direct a special entry to be made, in order to denote that the orders were quashed for want of form. And that it was to be lamented, that the stat. 5 G. 2. c. 19. which was intended to give the justices in sessions a power of amending orders of removal which were defective in point of form, had, by the construction which had been put upon it, been rendered a dead letter, as all defects of this sort had been considered to be matters of substance and not of form. 2 *E. R.* 66. 2 *Bott.* 635. pl. 694.

8. *Of the power of the sessions in orders of removal; and herein,*

- (a) *Of their judgment upon them.*
- (b) *Of stating a special case.*
- (c) *Of costs and maintenance.*



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was by law gone. On the other side it was said that it was not usual, in such cases, to return the continuances; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjudged the appeal, till by the coming of more justices the matter might have been determined. *L. Hardwicke C. J.* The question is, Whether there is a possibility of the justices proceeding in this appeal? He thought if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions. 2 *Seff. C.* 193. 2 *Bott.* 713. *pl.* 836.

Note] The C. J. advised the proceeding on the appeal, or returning the continuances, and seemed inclined to grant a peremptory mandamus if they did not do so.

So in *Battersea v. Westham.* *E.* 10 *W.* 3. It was decided that the sessions may confirm an order which they had previously at the same sessions quashed. 2 *Bott.* 712. *pl.* 835.

But by *R. v. Cuckfield.* *H.* 8 *W.* 3. The sessions cannot make an order of review, and quash an order of sessions made at the last preceding sessions. 2 *Bott.* 711. *pl.* 830.

But one sessions cannot quash the order of a former sessions.

(b.) *Of stating a special case.*

It was moved to set aside an order of sessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. 1 *Ventr.* 310.

South Cadbury v. Bradon. On appeal to the sessions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say, whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. — But by the court: The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the sessions reverse the first order, and that being removed appears to be good, this court will intend it was reversed on the merits, and affirm the order of sessions.

If the sessions reverse the first order, and that being removed appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears nought. 2 *Salk.* 607. 2 *Bott.* 751. *pl.* 900.

So that the case is this: If the sessions by their order do barely affirm or quash the order of two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears *good as to form*, and is *confirmed* by the sessions, the court will intend it was confirmed upon the merits: If it is *good as to form*, and quashed by the sessions, the court will intend it was quashed upon the merits: If it is *bad as to form*, and is *confirmed* by the sessions, the court will quash the confirmation, because it appears to be erroneous: If it is *bad as to form*, and is *quashed* by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely affirm or quash the order of the two justices, but set forth the reasons of their said order, and state the case specially thereupon: then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises upon these facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions, which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quash or confirm the order of sessions as they see cause.

Sessions are not
compel able to
state cases.

If the justices will not state the case specially, though it may be blameable conduct in them in some instances, yet there are no means to compel them. As in the case of *Oulton v. Wells*, M 9 G. 2. Two justices removed three children of *Francis Ailmer* from *Wells* to *Oulton*; and the sessions upon appeal confirm their order, generally, without stating any special case. The counsel for *Oulton* excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The substance of the exceptions was, That the said children, after their father's death, went with their mother to an estate of her own at *Burnham Overy*, and there inhabited with her upwards of three months. These exceptions were returned up together with the others. And it was moved to quash the order of sessions, together with the original order of two justices. The court were inclinable to come at this case if they could, as it seemed to be a determination against law. — But by *L. Hardwicke C. J.* To what purpose should we make a rule to shew cause why this order of sessions should

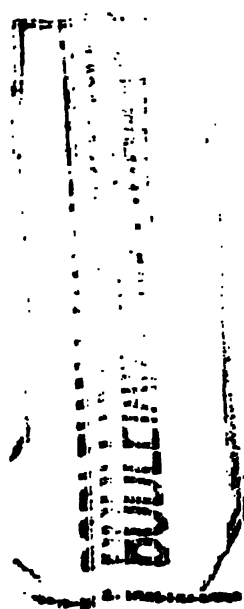
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be quashed? For I do not see, that we can ever make such a rule absolute; because this that is alledged to have been the real state of the case, doth not appear to us to be the fact. And how can we take it for granted that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law.—And Mr. J. *Page* said, he never knew an instance, that this court could force the justices, against their will, to state a special case. *B. S. C. 64. 2 Bott. 738. pl. 887.*

And in the case of *Preson upon the Hill v. Darebury, E. 9 G. 2.* Two justices made an order for removal of the pauper from *Darebury* to *Preson*. And upon appeal to the sessions, they confirmed the said order, generally; not caring to state any special case in their order. A motion was made to quash these orders; which came before the court upon a bill of exceptions containing a special state of the case. On shewing cause, the single question was, Whether a bill of exceptions would lie in this case to the court of quarter sessions.—By L. *Hardwicke* Ch. J. This is a case of great consequence. And there may be very great inconveniencies on either side. It hath been much wished, that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen, that they may determine in an arbitrary manner, contrary to the resolutions of the courts of law. For if the justices will not state the facts specially (though requested to do so) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniencies arising from the abuse of bills of exceptions. And this matter of the settlement of the poor, which ought to be rendered cheap and speedy, may by such means be rendered dilatory, expensive and burthensome. And after a full hearing of the arguments on both sides the court were unanimously of opinion; that a bill of exceptions doth not lie to the quarter sessions. *B. S. C. 77. 2 Bott. 713. pl. 837.*

Where the case is insufficiently stated, the court of king's bench frequently send it back to the sessions to be re-stated; who may hear fresh evidence or re-state the same upon the former evidence, according to the nature and circumstances of each case. In the case of *Sherfield v. Bray, E. 11 G. 3.* which was on the point of hiring for a year, the sessions had stated the evidence only, and not the fact of hiring. It was sent back to the sessions to be re-stated: and the majority of the justices there refused to re-examine the pauper, or to hear any further evidence; although three of the justices then

Where a case is insufficiently stated, it may be sent back to the sessions.



them there to be made, of notice of any such appeal to have been given by the proper officers to the churchwardens or overseers of any parish or place, (though they did not afterwards prosecute such appeal,) shall at the same sessions order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just; to be paid by the churchwardens, overseers, or any other person, against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs shall live out of the jurisdiction of the said court, any justice where such person shall inhabit, shall on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant cause the same to be levied by distress; and if no such distress can be had, shall commit such person to the common gaol, there to remain by the space of twenty days. 8 & 9 W. c. 30. f. 3.

M. 5 G. 2. R. v. the Justices of the county of Nottingham. A mandamus was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and thereupon quashed the writ of mandamus. *Nelf. Just. tit. Poor. 2 Bott. 756. pl. 909.*

The sessions are judges whether costs shall or shall not be given.

E. 16 G. 2. Stansfield v. Spotland. The sessions adjourned the appeal to the next quarter sessions, and ordered four guineas costs to the appellants: Which order was quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal, without hearing it. *B. S. C. 205. 2 Bott. 756. pl. 912.*

They cannot give costs on a mere adjournment.

For the preventing of vexatious removals, if the justices shall at their quarter sessions upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant that such poor person was unduly removed, they shall, at the same quarter sessions, order and award to such appellant, so much money as shall appear to the said justices to have been reasonably paid by the parish or other place on whose behalf such appeal was made towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner as costs and charges upon an appeal are to be recovered by the statute of the 8 & 9 W. 9 G. c. 7. f. 9.

Maintenance to be reimbursed.

E. 3 G. 3. St. Mary's Nottingham v. Kirklington. Motion for a mandamus to the justices of the town and county of Nottingham, commanding them to allow the parish of Kirklington the expence and charges their officers had been put to, in keeping a poor person from the time of his removal till the order

order was discharged by the sessions upon appeal. And a *mandamus* was granted. 2 *Seff. C.* 67. 2 *Bott.* 756. *pl.* 910.

M. 16 *G.* 2. *Great Chart v. Kennington.* The order of the two justices was quashed by the sessions for insufficiency; and the sessions thereupon order that the costs of maintaining the pauper, since the time of his removal, shall abide the event of the cause, in case the said parish of *Great Chart* shall think proper by another order to remove the pauper to the said parish of *Kennington*. Which order, as to the costs, was quashed by the court of king's bench; because the sessions must either or not give costs at the time when they make their order. *B. S. C.* 194. 2 *Bott.* 756. *pl.* 913.

A D D E N D A.

Apprenticeship.

R. v. Hinckley. Removal from *Stoke* in *Coventry* to *Hinckley* in *Leicestershire*, and appeal against it: the sessions confirmed the order, and stated as follows: *James Adie*, the pauper's husband, was in *April*, 1800, put out as a parish apprentice by the hamlet of *Atterton*, and served more than 40 days in the parish of *Hinckley* under such indenture. The indenture ran thus: This indenture made the 2d day of *April* 1800, in the 40 G. 3. &c. witnesseth that *W. Sketchley*, churchwarden of the hamlet of *Atterton* in the parish of *Wetherly*, in the county of *Leicester*, and *J. Geary*, overseer of the poor of the said hamlet, by and with the consent of his majesty's justices, &c. by these presents do put and place *James Adie*, aged 14 years, a poor child of the said parish, apprentice to *J. Bazley* of the parish of *Hinckley*, in the county of *Leicester*, frame-work knitter, with him to dwell and serve, &c. until the said apprentice shall accomplish his full age of 21 years according to the statute, &c.: and so it proceeded in the common form; concluding with covenants by *Bazley* to the said churchwardens and overseers, and every of them, &c. and their successors, to instruct the apprentice in his trade, and so to provide for the said apprentice that he be not a charge to the said hamlet, &c. In witness, &c. (Signed,) *W. Sketchley*, *J. Geary*, and *J. Bazley*; and the consent of the two justices to the indenture was in the usual form. No other evidence was produced either on the part of the appellants or of the respondents. And the question was, Whether the indenture of apprenticeship were a valid instrument or not, being made and executed by one churchwarden and one overseer only? — In support of the order it was stated, that there was nothing upon the face of the indenture which shewed that it could not have been executed by a competent authority. There might have been another overseer, and the one overseer and the churchwarden who executed the indenture would be a majority of the three, which is all that the 43 Eliz. c. 2. s. 5. requires. And they referred to *R. v. Bes-*

An indenture binding out a poor apprentice, executed by *W. S. churchwarden*, and *J. G. overseer* of the poor of a hamlet maintaining its own poor separately from the parish at large, not being impeached by evidence negating its execution by a majority of the churchwardens and overseers of the hamlet, shall be deemed good by intending that there were two overseers for the hamlet as required by 13 & 14 Car. 2. c. 12. s. 21. and only one churchwarden by custom in the same place; and therefore the apprentice serving 40 days under it gains a settlement.

lund



is, Whether by any intendment of law such an indenture can be good? And it may be good by intendment in the way put by my Lord. Then not being impeached by evidence, it stands good. — The other judges concurring, orders confirmed. 12 E. R. 3 61.

Hiring and Service.

(Vol. IV. p. 251.)

R. v. *Mitcham*, E. 50 G. 3. Removal from the parish of *Mitcham*, in *Surry*, to the parish of *Burghfield* (called in the order *Birchfield*) in the county of *Berks*. The sessions, on appeal, quashed the order, and stated the following case:

Joseph Pendry, being settled in *Burghfield*, was hired by *Graves*, the keeper of a toll-gate in the parish of *Egham*, at 3s. a week for as long time as his master and himself could agree, to assist in collecting the tolls; and continued to serve under such hiring for more than a year, during which time he assisted *Graves* in collecting the tolls, and occasionally took care of a horse and some hounds. *Graves* had no horse at the time he so hired *Pendry*, but bought one afterwards. The hounds were kept in premises belonging to the toll-house; and *Pendry* during all that time resided in the toll-house. *Graves* did not hire him as he had before hired a brother of *Pendry*, with whom he expressly contracted as for a yearly servant. *Graves* paid *Pendry* as he wanted money, pounds at a time. *Pendry*, after the hiring, married the pauper *Rebecca*, by whom he had the three children named in the order of removal, and afterwards deserted his wife and children.

A hiring at so much a week for as long time as the master and servant could agree, is only a weekly hiring, under which no settlement can be gained.

In support of the order of sessions, it was argued that this was a yearly and not a weekly hiring of the pauper by the turnpike-gate keeper, in the parish of *Egham*; it being for an indefinite period, as long as master and servant agreed, though the quantum of wages was to be ascertained by the number of weeks in which the service was in fact performed. The general rule, as laid down in *Rex v. Newton Toney* (a), that a mere hiring at so much a week, without more, would not give a settlement, was admitted; but here the parties looked to an indefinite period beyond the week, for the hiring was to continue at the rate of 3s. a week till the disagreement of one of the parties was expressed: and in *Rex v. Hampreston* (b), a hiring at so much a week, with liberty to part at a month's notice, was held to be a general

(a) 2 Term Rep. 453.

(b) 5 Term Rep. 205.

hiring



Leigh, as cases of dissolution, shewing that though the master urged the dissolution of the contract, without or against the desire of the servant, yet if the latter acquiesced by accepting the wages and departing from the service before the end of the term, that put an end to the contract. That here the pauper did at last accept that which the master insisted to be her full wages, and which would conclude her from any further demand; which made an end of the contract on her part, as the turning her out of doors by the master concluded him, on the other hand, from any further claim to her service; and there was no longer any mutual remedy upon the contract. — *Ld. Ellenborough C.J.* There must be an abiding in the service for a whole year, in order to confer a settlement; as far as lay in the pauper there was such; but she was wrongfully and forcibly turned out of doors by her master against her will, and when she returned the next day for her clothes, he gave her 4l. 10s. which he said was the whole of her wages: but she did not assent to that, but demanded more, though she took what he was willing to give her in part, and offered to stay to the end of the year, maintaining her right to her full wages. She therefore did all she could to abide in the service according to her contract, and did so, except so far as she was prevented by an act of force. And he distinguished between this and the case of *R. v. Grantham*. The servant having there been improperly turned out of doors by his master, in the first instance, took him at his word, and refused to return to the service, though invited by his master so to do: and when the master at last agreed to pay him his full wages, he left the service contrary to the express request of the master to stay. *Grose J.* agreed, and said that the servant's tendering herself to perform the service was equivalent to the performance of it in law. *Le Blanc J.* agreed, and mentioned that the pauper did not here, as in *R. v. Leigh*, hire herself into another service before the end of the year, which was there held to be a dissolution of the contract. *Bayley J.* agreed. Order of Sessions confirmed, 12 E. R. 51.

Overseers' accounts.

(Vol. IV. p. 138.)

By the 50 G. 3: c. 49. s. 1. reciting, That *whereas by the 43 Eliz. c. 2. it is enacted, that churchwardens and overseers of the poor of every parish shall, within four days after their ear, and after other overseers nominated, make and yield up to*
 Vol. IV. S f two



tels, and other things, which shall appear to be so remaining in his, her, or their hands, as aforesaid; and in case such churchwardens and overseers, or any of them, shall refuse or neglect to pay to their successors within fourteen days from the signing and attesting such account, any money or arrearages which on such examination and allowance, shall appear to be due from such churchwardens or overseers, or any of them, or remaining in their hands, the subsequent churchwardens and overseers shall by warrant from any two or more justices, levy such money by distress and sale of the offender's goods, and in default of such distress, they may commit the offender or offenders to the common gaol of the county, there to remain until payment of such money or arrearages as aforesaid.

By s. 2. Provided that if such churchwardens or overseers, or any of them, shall feel aggrieved by any such disallowance or reduction, and be desirous of appealing against any order in that respect, made by any such justices, it shall be lawful to enter an appeal against such order at the next general or quarter sessions, to be holden next after the 10th day from the making of such order, having first paid or delivered over to the succeeding churchwardens and overseers, such money, goods, chattels, and other things, as, on the face of the account which shall have been submitted to such justices in manner aforesaid, shall appear and be admitted to be due and owing from him, her, or them, or remaining in hand, and having also entered into a recognizance before one or more such justice or justices, with two sufficient securities, in not less than double the sum or value in dispute, to enter such appeal at such next general or quarter sessions, and abide by such order as shall at that or any subsequent sessions, be made on such appeal; and it shall be lawful for the justices of the peace assembled at such general or quarter sessions, on proof of the matters aforesaid, and on the production of such recognizance and proof of the same having been duly entered into, to adjourn such appeal if they shall see occasion, or to hear the same, and to examine into and to confirm or reverse such disallowance or reduction in the whole or in part, as to such justices at such sessions shall seem just; and in any such case, the said justices at such sessions may (if they shall think fit) make an order that such churchwardens and overseers shall have the costs by them incurred, upon any such appeal, defrayed out of the poor rates of the parish or place; and the order of the general quarter sessions in execution of the powers given to them by this act, shall be binding on all parties.

Churchwardens, &c. may appeal to quarter sessions.

And by s. 3. Nothing herein contained shall be construed to take away any power of appeal against any such account, by any other person entitled to appeal against the same, by virtue of the said recited acts or either of them.

Appeal may also lie to any other Person.

By s. 4. Every mayor, bailiff, or other head officer of every town and place corporate, and city in Great Britain, or any two magistrates of such town, &c. bring justice or justices of peace re-

Magistrates of corporations shall have the same jurisdiction as two or more justices respectively,

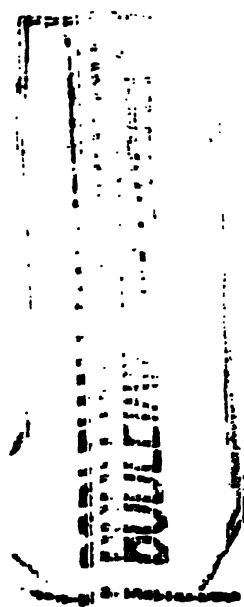


“ and other minerals and fossils, and also all the seams of
 “ coal then open or discovered, or which should or might,
 “ during the time therein mentioned, be opened or disco-
 “ vered, within, under, or upon the township lands called
 “ *Nuckton*, in the parish of *Hunstonworth*, and within cer-
 “ tain other lands therein mentioned; together with full
 “ liberty and authority for the lessees to dig and search for
 “ pits, &c. under any of the said lands, for getting all the
 “ lead ore, minerals, and coals, in or upon the said mining
 “ grounds:” with other powers for the erection of ma-
 chinery and other buildings on the mining grounds, and for
 facilitating the working of the mines as therein mentioned:
 “ to hold the demised premises to the lessees for the term of
 “ 21 years, *yielding and paying therefore, yearly, during the*
 “ *said term, unto the said lessors*, their heirs, &c. for and in
 “ respect of the said lead ore and other minerals, the clear
 “ yearly rent or sum of 100l.” payable half yearly. There
 were also reserved, by way of rent, certain proportions of
 such lead ore as should be gotten from and out of the said
 mining grounds. There was also a separate rent reserved
 for the coals, when wrought, and a rent for damages done to
 the ground tenants. The lessees were bound to pay all man-
 ner of taxes, rates, assessments, and impositions whatsoever,
 parliamentary or parochial, already or thereafter to be taxed
 on the demised premises, or on the lead ore, or other mine-
 rals, coals, or fossils, gotten thereout, or on the lessors or
 lessees in respect thereof. The case also stated, that no
 coal mines had been wrought within the grounds mentioned
 in the lease. That the lessees had other lead mines in the
 neighbourhood, but had gotten no ore from under the
 grounds of the lessors mentioned in the lease, and conse-
 quently no proportion of lead ore had been rendered or be-
 come due to the lessors. The lessors stood rated in 50l.
 being a moiety of the certain rent of 100l. reserved by the
 lease, and which was deemed a fair proportion for that part
 of the mining ground which is in the parish of *Hunstonworth*;
 and the lessors, if liable at all, did not object to the fairness
 of the apportionment. The rate was in the following
 form: “ Lord *Crew's* trustees for certain annual rent paid
 them by *Easterby, Hall, and Co.* for the liberty of opening the
 mines within their lands, spoil of ground, &c. 50l.—Rate 8l.
 15.” None of the lessors reside or have any dwelling house
 in the parish of *Hunstonworth*. The lessees were not rated
 to the relief of the poor in respect of the demised mines.

poor for such
 certain rent, on
 ore being raised,
 whatever the
 question might
 be as to the
 proportion of
 ore reserved
 when in fact
 any should be
 raised.

In support of the rate the reliance was principally upon
Rowls v. Gell (a). By the resolutions of the judges of as-
 sise in 1633 (b) to the question whether shops, salt-pits,
 profits of a market, &c. be taxable to the poor as well as

(a) *Comp.* 451. (b) *Dalt. Just. ch.* 73. p. 235. 2. & R. 19.
 S f 3 lands,



nual produce, so far as the subject-matter produced is in itself liable to be assessed within the construction of the stat. 43 *Eliz.* It must be shewn that the receipt of rent elsewhere is an actual occupation of the land in respect of which such rent is reserved; which must go the whole length of establishing that landlords are liable to be rated, as well as tenants; and this, even though the land produce no annual profit at all in the hands of the tenant. The decision in *Rowls v. Gell*, on which *R. v. St. Agnes* proceeded, was doubted by Lord Kenyon in *Rex v. Parrott (a)*. But this case is at all events distinguishable; for there the profits of the lord arose immediately from a certain proportion of the ores brought to the surface without any expence or risk on his part; but here the ores are demised, and the landlords receive a certain money-rent for their interest in the land during the lease, whether any ores be raised or not; which rent is not the subject-matter of occupation within the parish. Then there is neither inhabitancy nor occupation, in respect of which the landlords can be rated in this parish.

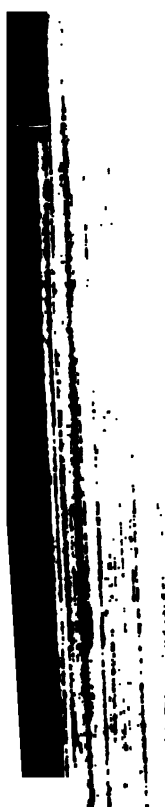
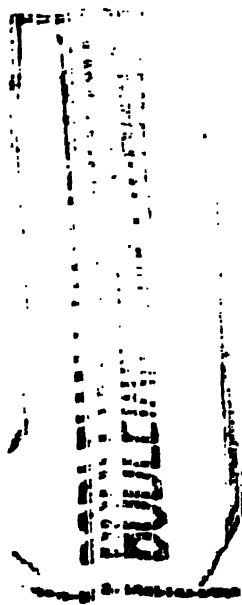
Lord Ellenborough C. J. The trustees can only be rated as inhabitants or as occupiers within the parish. We have so recently (b) put a construction upon the word *inhabitant* in the statute of *Elizabeth*, as meaning a *resident* within the parish, that it is unnecessary to discuss the matter again; and the fact of such an inhabitancy is negatived by the case. Neither are they *occupiers* of the property for which they are rated; so far from it, that they cannot maintain trespass for any injury done to the property which they are supposed to occupy: and even if they were the actual occupiers of coal mines, they would not be rateable for them before they were worked and productive (c). But this is no more than a contract with tenants for the payment of a certain rent for ores supposed to lie under the surface; and if the tenants should open the ground and raise the ore, reserving a certain proportion of ore to the ground landlords. There is no occupation of any thing within the stat. If hereafter the tenants should open the ground and raise the ore, the trustees will then be entitled to certain proportions, and such profits may come within a different rule, as lot and cope: upon which no question at present arises. *Grose J.* and *Bayley J.* agreed.

Le Blanc J. If the trustees were rateable at all, it must be as occupiers of the mines, or some proportion of them:

(a) 5 *Term Rep.* 596.

(b) *Rex v. Nicholson*, 12 *E. R.* 330. and *Williams v. Jones*, 1. b. 346.

(c) Vide *Rex v. Bedworth*, 8 *East*, 387. where the lessee of a coal-mine, which, having ceased to be productive, was no longer worked, was held not liable to be rated for it, although he was still bound by his covenant to pay the rent reserved to his landlord.



parishes, and the property would be liable to a double rate if it were also rateable in the hands of the commissioners. Here is no benefit received by these commissioners for themselves or others within this parish, which is capable of being rated. The benefit is all divided in other parishes. The dock company of *Hull* were in the receipt of tolls for the benefit of the share-holders in respect of the use of the docks within the parish in which they were rated: but the commissioners are the mere instruments of benefit to land owners elsewhere. I know of no instance where a canal company has been held rateable for the mere space occupied by the canal in a particular parish if no tolls were received or become due there; and I cannot distinguish between land converted into a drainage and a canal. And finally, he delivered the opinion of the court that the commissioners having no beneficial occupation of the property in this parish, either for themselves or others, were not liable to be rated for it. Order of sessions confirmed. 12 E. R. 40.

(Vol. IV. p. 72.)

R. v. Tynemouth, H. 50 G. 3. Upon an appeal of *W. Fowke* Esq. against a rate for the relief of the poor of the township of *Tynemouth* in the county of *Northumberland*, the sessions amended the rate by striking out *Mr. F.*'s name, and that of his servant *R. W.*, subject to the opinion of the court upon two points; 1st, whether *R. W.* be rateable for two rooms in *Tynemouth* lighthouse? 2d, whether *Mr. F.* be rateable for the tolls in respect of the lighthouse? — By certain letters patent of the 17 C. 2. and by the 42 G. 3. *Mr. F.* is entitled to *Tynemouth* lighthouse, and certain tolls payable in respect of the same, for every ship passing by the lighthouse and belonging or trading to the ports of *Newcastle* or *Sunderland*, or either of them, or the creeks or members of the same: and for certain tolls from every ship belonging to any foreigner or stranger coming or passing by the lighthouse. — The lighthouse is in the parish of *Tynemouth*, the tolls are payable upon ships sailing on the *German* ocean, and benefited by it. They never come within the township of *Tynemouth*, and neither *Mr. F.* nor any of the receivers of the tolls or duties reside in the township of *Tynemouth*, and the tolls are collected out of it by a person appointed by *Mr. F.* *R. W.* is a servant of *Mr. F.* at an annual salary, and resides within the walls of the lighthouse, to take care of the lighthouse: and is rated for these two rooms, as occupier, at 6d. And *Mr. F.* is rated for the tolls, in respect of the lighthouse, at 750l. Lord *Ellenborough* C.J. It is no question now whether this property could be rated in some other way; as if the lighthouse, whose light is the meritorious cause of earning the tolls, were in consequence let at a larger rent; but this is a rate specially



The appellants were not, at the time of making the assessment, *inhabitants of Manchester*, but were then and still are entitled to and in the receipt of the tonnage, in respect of vessels passing through the lock built upon the *Rochdale* canal, under an act of the 34th G.3. The 2d sect. reciting that "Whereas when the proposed junction is made with his canal the profits of the Duke of *Bridgewater* arising from his wharfs will be considerably diminished; he nevertheless consents to such junction on being authorized to build a lock upon the *Rochdale* canal near the junction, and to collect certain rates hereinafter mentioned, as a compensation for such diminution in the profits of his wharfage;" authorizes the Duke &c., "at his and their own expence, to build a proper lock upon the said *Rochdale* canal, at or near *Castle Field*, &c.; and to take at the said lock for his and their own benefit (as a compensation &c.), the following rates, viz." (naming rates for goods carried from the *Rochdale* canal to the dock) "which rates shall be payable and paid at or near the said lock to the said duke, &c., and shall be collected by such person as the said duke, &c. shall by writing, &c. appoint to receive the same." The lock was built in pursuance of this act. The tonnage is of the amount charged in the assessment. The appellants did and do still occupy the lock and warehouses and wharfs mentioned therein; and they are of the value assessed. The case then set forth the names of several individuals on whom notices of appeal were served, who were, at the time of the assessment, *inhabitants of Manchester*, and respectively possessed of visible stocks in trade in that township; and were then personally liable to be assessed to the relief of the poor in respect thereof, if by law such property be rateable in such assessment: but that neither of them were rated in respect of their said stocks in trade or other personal property; neither were any *inhabitants of Manchester* or other persons rated in respect of their personal property in the township. The proprietors of the *Rochdale* canal company were not rated for their locks upon the said canal situated within the township, or for the tonnage, tolls, duties, or rates, arising from such locks, or otherwise from the said canal within *Manchester*; this being provided for by an act of the 47. G.3., In addition to the proof already given, the appellants gave further evidence of the amount of the clear surplus of stock in trade or other personal property, in the instances of the several persons contained in the notice of appeal; but the justices not being satisfied, from the evidence offered, that there was any sum of surplus by which they could amend the rate, by adding the names of the persons



conclusion : but the justices have only found that certain persons, inhabitants of *Manchester*, were possessed at the time of visible stocks in trade within the township, and were personally liable to be assessed to the poor's rate in respect thereof, if by law such property be liable to be rated. Now stock in trade, merely as being *visible*, is not liable to be rated, but to make it rateable it must also be *productive* ; but the justices have found that it was not productive, or what is the same in effect, that it was not proved to be so to their satisfaction. That finding concludes the question. And then the remaining question stands on the rateability of the property of the trustees. The case states that they are the occupiers of *the lock* and of the several wharfs and warehouses mentioned in the rate ; and it is not disputed that the property rated yields profit : but it is objected that they are rated for *dues* or *rates*, that is, for the tolls payable at the lock under the act of parliament ; and that the court have held tolls not to be rateable. But the court have only said that tolls are not rateable *per se*, but only when connected and rated conjunctively with real and substantial property, situated in the parish, which, as yielding profit there by means of the tolls, is the proper subject of rating within the act of *Elizabeth*. Now here the lock itself is rated, which is something real and substantial, locally situated in the township, and producing profit ; and the addition of the *dues* or *rates* is merely giving other names for the same thing. These dues or rates are given by the act of parliament as a compensation to the Duke of *Bridgewater*, for the loss of his profits of certain wharfs adjoining to his canal at *Manchester* ; which wharfs were before clearly rateable in respect of those profits : the rates, therefore, made payable at the lock were substituted as a compensation for and in lieu of the wharfage before enjoyed : they are the substituted medium of profit arising, as the act describes, from those wharfs. The court, therefore, by this decision, will not break in upon that which they have recently decided it, that tolls *per se* and when not mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there, are not liable to be rated. The other judges concurring, the rate and order of sessions confirmed. 12 E. R. 324.

(Vol. IV. p. 78.)

R. v. John Nicholson. B. 50 G. 3. John Nicholson appealed to the sessions against a rate made for the relief of the poor of the township of *Monkwearmouth-shore*, in the county of *Durham*, whereby, as lessee of an ancient ferry, from and between *Sunderland* near the sea, in that county, and *Monkwearmouth-*

The lessee and occupier of an ancient and exclusive ferry, not being an inhabitant resident within the township in which one



tenants, and inhabitants, in the act passed for the erection of *Wearmouth* bridge in 1792, and amount to from 80l. to 100l. a-year. The ferry has always until the year 1802, when it was let to one *Thomas Wandlefs*, who lived in *Monkwearmouth-shore*, been let to persons living in *Sunderland*, and been rated to the poor of *Sunderland* for the whole of the tolls or ferry dues: and it has at different times been also rated to the poor of *Monkwearmouth-shore*; but nothing was ever paid to that township until *Wandlefs* took the ferry; when the parish of *Sunderland* having raised his rate, in consequence of his having given an additional rent, he objected to pay, and appealed to the sessions at *Durham* in July 1805, but the case was abandoned by the respondents, and *Wandlefs's* rate was amended, and reduced to half of the tolls of the ferry; and the ferry has since been continued to be rated to *Monkwearmouth-shore* for one half of the tolls or ferry dues, including one half of the custom money, and for the other half thereof, including the remaining half of the custom money, to *Sunderland*. The number of passengers from *Sunderland* to *Monkwearmouth-shore* are about the same as from *Monkwearmouth-shore* to *Sunderland*. The place where the ferry lands in *Monkwearmouth-shore* is of little or no value of itself, in case it was not used for the ferry landing. In this case it was admitted that the appellant was properly rated in the township of *Monkwearmouth-shore* as to quantum, in case he is rateable there at all for any part of the tolls or fees arising or received from or in respect of the ferry boats. The sessions confirmed the rate.

[The arguments addressed to the court in the next succeeding case, are here brought together as relating to the same point.]

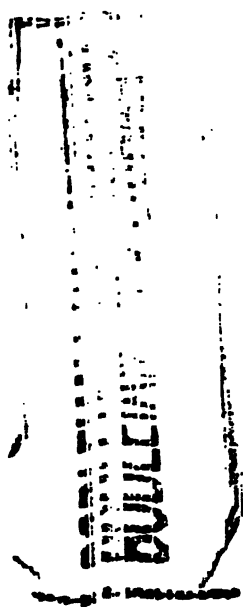
In affirmance of the rate it was urged that a ferry was real property; an incorporeal hereditament within the parish; local in its nature, and having locality assigned to it by law: demandable in a *præcipe quod reddat* (a), in counting upon which

(a) No authority was cited for this. *Quære* what of realty is in fact to be rendered upon the demand of a ferry in such a writ? In *Saville's Rep.* 11. it is indeed said to have been holden in the Exchequer-chamber, an. 23 *Eliz.* that a ferry is in respect of the landing-place, and not of the water, and that the land on both sides ought to belong to the owner of the ferry. And it is not conceivable, how any ferry could have originated by private authority without the assent of the owners of the land on each side: except perhaps where the landing on both sides was in a common highway, where the licence of the crown would be presumed. In *Juxon v. Thornhill, Cro. Car.* 132. [S. C. 1 *Roll. Abr.* 464.] the king's licence to the plaintiff to fix locks on the river *Ouse*, which is a common public river, for the easier navigation of it, taking reasonable toll, was only sustained because the locks were upon the plaintiff's own land. Yet it does not follow that the owner of the ferry

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out of which the tolls arose, as on the sluice in *R. v. Cardington* (a), and in the *Salters' Load* sluice case (b). Bayley J. All the cases of tolls held rateable have been where the tolls arose out of the use of land.] Yet in *Atkins v. Davis* (c), Buller J. speaking of the case of *R. v. Cardington*, said, that Palmer, who was there rated in respect of the tolls, had no property either in the soil or in the water, but had merely a power of erecting sluices and taking tolls. Neither was the soil of *Aire* and *Calder* rivers vested in the undertakers of the navigation, yet in their case (d) the toll and duties of the navigation, which they were authorized to collect by act of parliament were held rateable (apart from the lands, wharfs, &c. in their own occupation,) in the two parishes where the collection was made in respect of the whole line of the navigation, which ran through several intervening parishes. So in the case of the *Leeds* and *Liverpool* canal (e), the company were rated specifically for their tolls of the navigation as well as for their warehouse and land. [Lord Ellenborough C. J. The undertakers of the *Aire* and *Calder* navigation had I believe real property in the parishes where the tolls were collected; and the rate was upon the tolls conjoined with that property, which property was rendered so much more productive by reason of the tolls collected there. So in the *Leeds* and *Liverpool* case it was a conjunctive rating. The tolls were held rateable for the canal within the parish. But is there any case of rating tolls where the owners had no land or visible property in the parish?] In every case where tolls have been rated as well as land, the order of sessions confirming both conjunctively ought to have been quashed instead of being confirmed, if the court had not considered that both were rateable. [Lord Ellenborough C. J. The great difficulty is to bring the case within the words of the stat. 43 Eliz. c. 2. conferring the authority. The party rated must be either an inhabitant of the parish, or he must be an occupier of one or other of the descriptions of property mentioned in the statute: and within which does this appellant come? The case states him to be in fact an inhabitant of another place.] He may be considered as an occupier of land in respect of the use which he has of the water which covers the land, and is part of the realty. The word *lands* is used in the statute as the *nomen*

(a) *Cowp.* 581.(b) 4 *Term Rep.* 730.(c) *Cald.* 326 and vide *ibid.* 335. S. P. by Willes J.That was the case of the *London Bridge* water-works, rated in discharge of damages recovered under the riot act, which speaks of ability in general, and does not specify, like the stat. 43 *Edw.* any particular taxable objects.(d) *Term Rep.* 660.(e) 5 *East*, 325.



visible and tangible to make it the subject of *occupation*. When, therefore, this is argued to be an incorporeal hereditament, it does not follow, nor is there any authority to shew, that a person is rateable for an incorporeal hereditament in the place where he does not reside. The specific mention of *tithes* in the statute shews that without such express mention the owner would not have been rateable for that species of property under the general word *lands*; and *expressio unius est exclusio alterius*. This is a rate on the tolls of a ferry, in other words, upon the profits made by the manual labour of working the ferry boats; that is upon the freight of the boats; and that in a place where the owner does not reside, and where the boats are not kept. And though if he were an *inhabitant* of the township the ferry boats of which such profit was made might furnish a local visible criterion of the party's ability, yet in no other character could he be rated for such profit. The right of conveying persons from the one side of the highway to the other is a mere franchise or privilege: the right of landing on the soil of the highway is common to all the king's subjects alike: therefore, the owner of the ferry has not even the exclusive right to the use of the soil. Other boats may land there, though they may not carry passengers or cattle for hire. [Ld. *Ellenborough C. J.* The owner of the ferry may be said, perhaps, to have a right to make a special use of the highway; but he cannot be said to have the occupation of the highway.] It is merely *toll thorough*, which is taken for passing over the highway, in consideration of repair or other benefit done by the owner of the toll, but without any interest or claim in the soil; and not a *toll traverse*, which originates in the liberty given to pass over the owner's soil (a). In *Jolliffe's case* (b) the grantee of a way-leave, which is a mere easement, was held not rateable for it: and a ferry is no more than a public easement. In all the cases the subject-matter was corporeal visible property in the parish, whatever the form of the rate may have been. In the case of the market-toll of *Wickham* (c), the corporation were probably the owners of the soil. In the other cases (d) of tolls

(a) Vide *Lord Pelham v. Pickersgill*, 1 Term Rep. 660. where this subject is fully discussed.

(b) 2 Term Rep. 90.

(c) 3 Keb. and 1 Freem. 419. Vide *Rex v. Gardner*, Cowp. 79. a corporation may, by its officers or servants, be an inhabitant or occupier within the statute 43 Eliz.

(d) *Rex v. Gardington*, Cowp. 581. *Rex v. Salter's Local Stairs*, 4 Term Rep. 730. *Rex v. Page*, ib. 543. *Rex v. The Mayor, &c. of London*, ib. 21. *Rex v. St. Nicholas, Gloucester*, Cald. 262. and *Rex v. Hogg*, Term Rep. 721.



tolls : but they were the lords of the soil where the market was held, in respect of which they were rated for the tolls. In the case of *R. v. Cardington* the rate was specifically upon the sluices, on that which was local and visible property, and producing profit within the parish ; and all the cases where tolls have been held to be rateable, when they are examined, will be found to have proceeded on that ground. It was so in the case of the *Staffordshire and Worcestershire* canal : the company were then rated for " their basins, " towing-paths, and that part of their canal and the locks " lying within *Lower Mitton*, and for the tolls and duties " arising therefrom due at *Lower Mitton*." There could be no doubt that the *basins, towing-paths, canal and locks*, were local visible property there, and the *tolls and duties arising therefrom*, classed and connected as they are with the local visible property rated, were considered as resulting from that local and visible property. In all these cases the tolls have arisen from the use of the canal, which is local and visible, being part of the land itself, lying within the parish where the tolls have been rated. But there is no case where tolls detached altogether from local real property have been held to be rateable *per se*. When, therefore, we are called upon to decide such a question for the first time, I am always disposed to go to the fountain-head, which is the act of the 43 *Eliz.* ; and looking at the words of that act, I do not find any of them which extend to rate any person not being an inhabitant of the place, nor the occupier of any of the specific kinds of property mentioned in the act. And not finding any description in the statute which applies to the case of this appellant, I cannot hold him to be rateable for these tolls.

Grose J. of the same opinion.

Le Blanc J. The appellant is rated specifically as the lessee of the ferry for *half of the tolls or ferry-dues* in the township of *Monkwearmouth-shore* ; and it is found he is an inhabitant of and lives in *Sunderland* : and it is not stated that he is the occupier of any property in *Monkwearmouth-shore* : and that brings it to the simple question, Whether a person residing out of the township be rateable there for the tolls of a ferry, which tolls arise and become due to him for carrying passengers and cattle from the one shore to the other, one of which lies in the township. The origin of his rateability, if it exist at all, must be sought for in the stat. 43 *Eliz.*, which does not extend in terms to this case. It is contended that he is an *inhabitant* of the township within the meaning of the act, and that he is also within it as an *occupier of real property*. Now when the word *inhabitant* is used as well as *occupier*, I must consider that by the former

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boats across an arm of the sea, called the straits of *Menai*, or the river *Menai*, from the county of *Carnarvon* to the county of *Anglesey*, and vice versa. The king's highway from *London* to *Holyhead* leads to and from the said arm of the sea, within the limits of the ferry. For many years there have been and now are five landing-places in the parish of *Llandysilio* in *Anglesey*, used by the ferry-boats on landing from the opposite shore; which landing-places have, within four years before the making of the rate in question, been repaired by *Williams*, the proprietor of the ferry: and for many years there hath been and now is a post fixed in the ground at one of the landing-places, used for mooring the ferry-boats when on the *Anglesey* side. The said arm of the sea is navigable for all the king's subjects: and they have always of right landing at the several landing-places at their pleasure; and the proprietor of the ferry never had the sole or exclusive use of the said landing-places, or either of them; but has the sole and exclusive right and privilege of conveying by his boats persons, cattle, and carriages, for hire, from a part of the said king's highway lying in the parish of *Bangor*, in the county of *Carnarvon*, to another part of the said king's highway, lying in the parish of *Llandysilio* in *Anglesey*, and vice versa. The ferry-boats have been worked and navigated by the proprietor's servants, hired and paid by the day; and the tolls and hire due for such conveyance from the Co. of *Carmarthen* to the Co. of *Anglesey* have been in fact paid to his servants for the use of the proprietor of the ferry, sometimes upon the said arm of the sea, a little before the arrival of the boats at the landing-places, and sometimes in the boats at the landing-places, and at other times upon the landing-places in the parish of *Llandysilio*, after the persons paying the same have landed; and they have from time to time paid over the tolls and hire so received by them to his agent, residing in *Llandysilio*; which agent has never been rated, nor ever paid any poor rates: and has, monthly, paid over such tolls and hire to another agent of *Hugh Williams* at *Beaumaris*, in *Anglesey*, out of the parish of *Llandysilio*, for the use of *H. Williams*. *H. Williams* never inhabited or dwelt in the parish of *Llandysilio*, and no proprietor of the ferry or tolls, or other person in respect thereof, has at any time been rated for the same to the relief of the poor of the parish of *Llandysilio* before the making of the rate in question. That *H. Williams* was rated for *Porthaethwy Ferry and the tolls thereof*, at the sum of 10*l.* 13*s.* The court below gave judgment for the defendants; and the plaintiff below having in the mean time died, his executrix brought this writ of error.



vided that no addition or alteration to be made by such justices shall be contradictory to the rules, orders, and regulations established by the said 22 G. 3. c. 83. and provided that the same shall not be repealed by the justices at their quarter session of the peace; and for enforcing and carrying into execution such rules, orders, and regulations in every parish and place where the same shall be established by virtue of this act, every justice of the peace shall for that purpose have the powers by the said 22 G. 3. c. 83. vested in visitors of the poor; and all churchwardens and overseers, within their respective parishes and townships, shall have and exercise the powers, and shall perform the duties by the same act vested in and imposed upon governors of the poor.

By s. 2. Persons contracting for the maintenance of the poor of any parish or place shall, with respect to all such things as they shall contract to perform and provide for the poor, be subject to the jurisdiction and orders of justices of the peace in like manner in all respects as overseers of the poor are subject thereto; and that every order of any such justice to or upon any person so contracting, may be enforced and carried into execution by such means as the same might have been enforced and carried into execution against any overseer of the poor; and that every person so contracting for the maintenance of the poor, who shall refuse or neglect to obey any such order, shall be punishable by the like forfeitures and penalties, to be levied in the same manner as in cases of disobedience or neglect of the orders of justices by overseers of the poor.

Contractors for providing for the poor shall be subject to the jurisdiction of the justices as overseers of the poor.

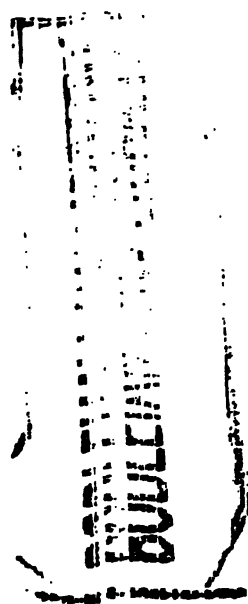
By s. 3. Provided it shall be lawful for the justices in any such special session as aforesaid, upon the application of the overseers of the poor of any parish or place, or of the major part of them, to appoint the keeper of the workhouse of any such parish or place to be the governor thereof, and the keeper so appointed, so long as he shall continue keeper of such workhouse until the justices in any such special sessions shall revoke such appointment (which they are hereby empowered to do) shall have, use, and exercise the powers, and perform the duties by the said 22 G. 3. c. 83. vested in and imposed upon governors of the poor.

Justices may appoint the keeper of the workhouse to be the governor.

By s. 4. If any person who shall be sent to any poorhouse or workhouse shall embezzle, or wilfully waste, spoil, or damage any of the clothing, goods, or materials committed to his or her care, or shall take or carry away, without permission of the overseer of the poor, or keeper of the said workhouse, any clothing, goods, or materials provided for the use of such poorhouse, or of any of the poor therein, complaint thereof may be made upon oath to one or more justices of the peace acting for the district or division in which such parish shall be situate; and such justices are hereby authorised to hear such complaint, and upon conviction to commit the offender to the house of correction, there to be kept to hard labour for any time not exceeding two calendar months, nor less than seven days.

Penalty on embezzling goods.

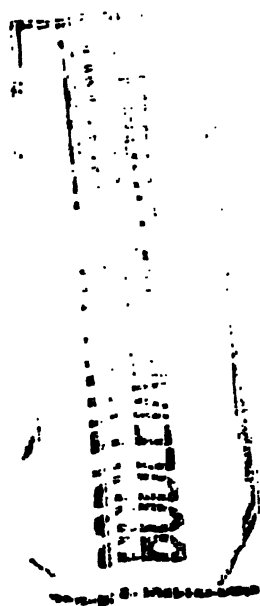
And



whose favour it was made, finding they could not support it, abandoned it by consent, and acted accordingly. And what objections can there be to a party's abandoning a judgment intended for his own benefit? In this case in *Salkeld*, (*Chalbury v. Chipping Farringdon*), there was no consent of the party in whose favour the order of justices was made to vacate it. Orders confirmed. 12 E. R. 359.

Tenement Renting, (Settlement by.)

23 G. 3. c. 23. s. 1. No person or persons whomsoever now a prisoner or prisoners, or who shall hereafter become a prisoner or prisoners in the K. B. prison or the rules thereof, shall gain or be adjudged or deemed to gain a settlement in the said parish of *St. George the Martyr*, in the borough of *Southwark*, in the county of *Surry*, by renting a house, part of a house, lodging, furnished or unfurnished, or any other premises whatsoever, within the said parish, or by being rated to and paying any rates or taxes for the same, whilst he, she, or they shall be such prisoner or prisoners; nor shall any person or persons gain or be adjudged or deemed to gain a settlement within the said parish, by or by reason or on account of living or having lived or resided with any prisoner or prisoners, within the said prison or rules thereof, as or in the capacity of a hired servant; any law, statute, usage, or custom to the contrary notwithstanding.



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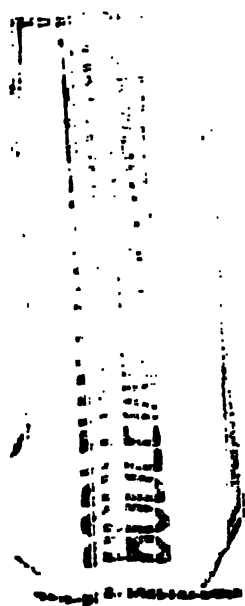
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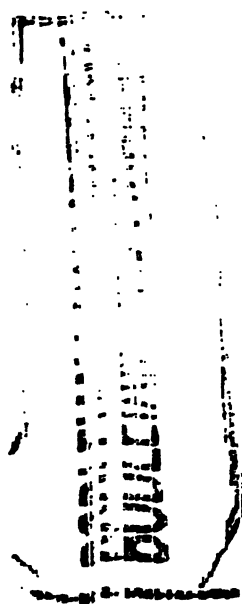
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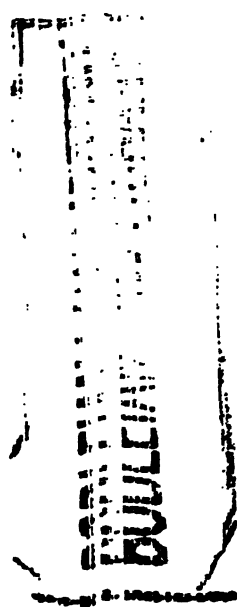
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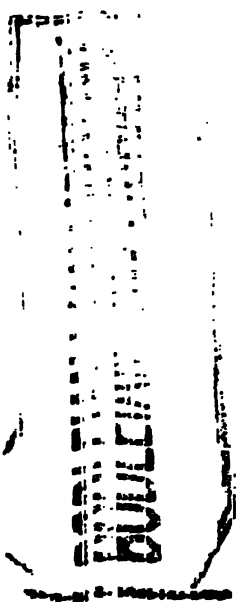
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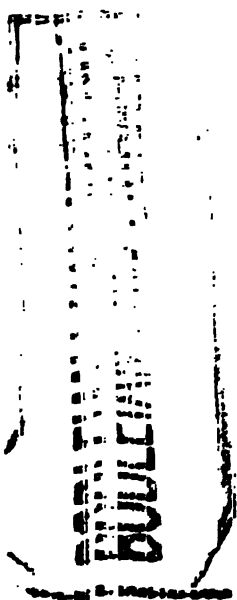
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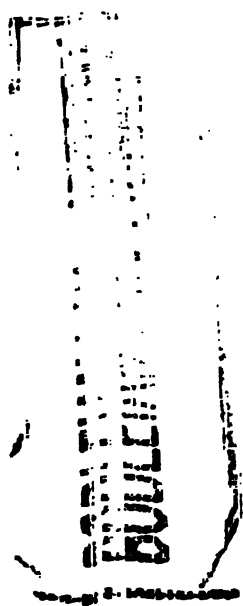
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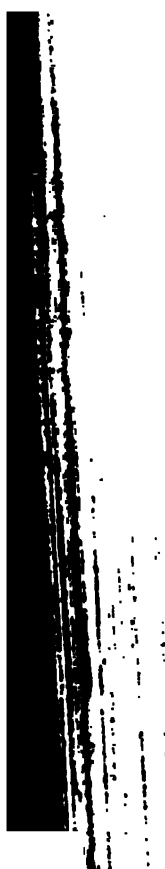
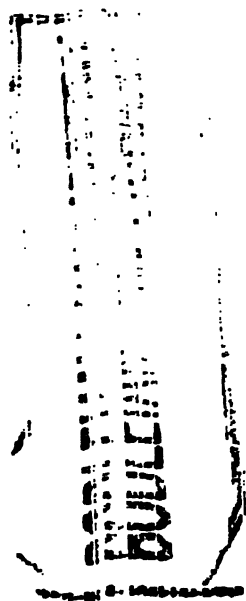
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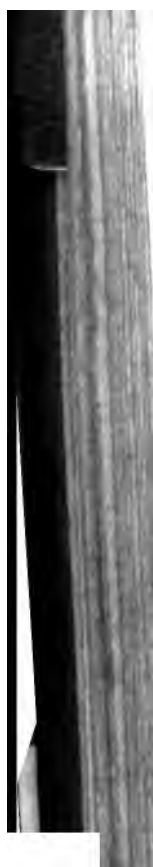
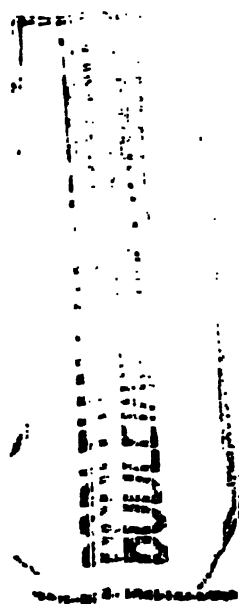
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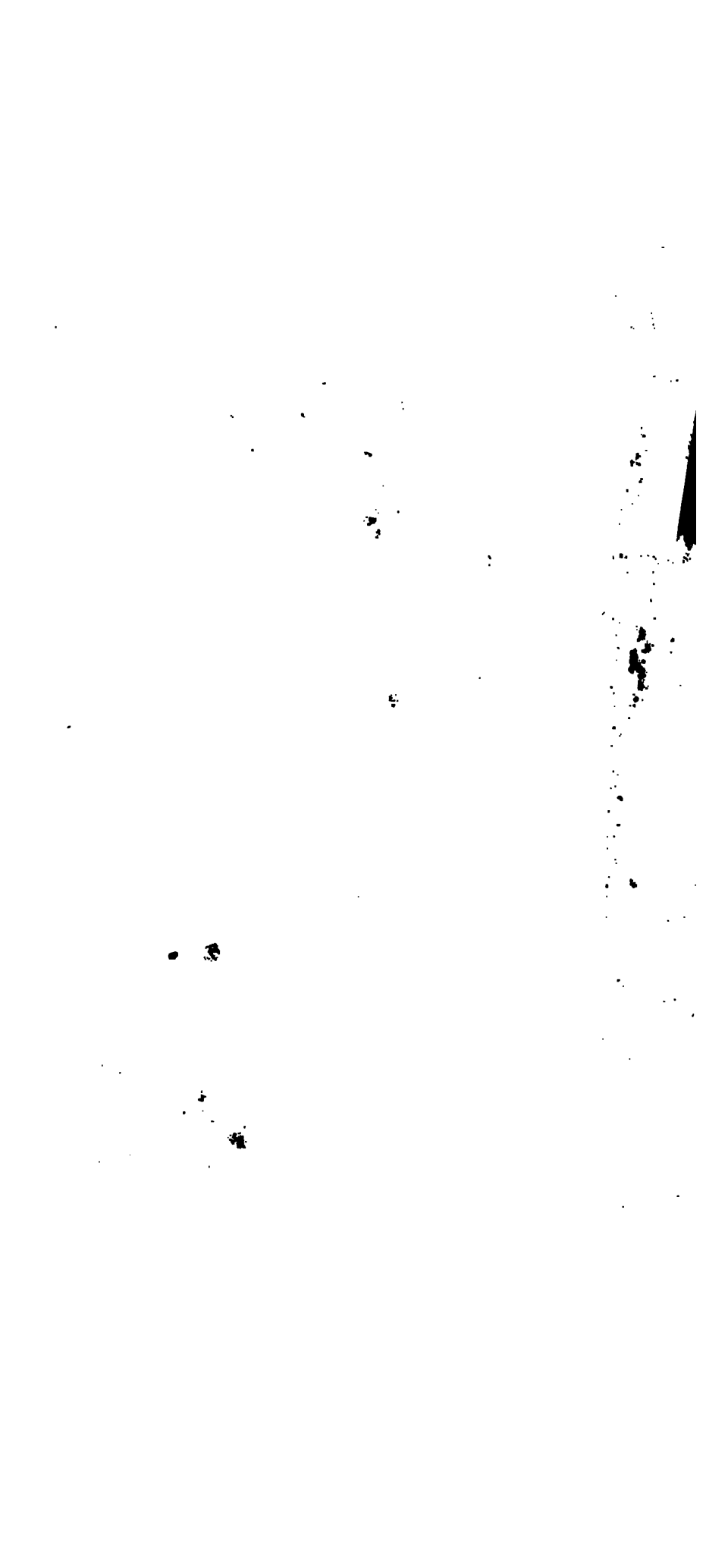


ERRATA

IN THIS FOURTH VOLUME.

- Page 20, line 5, for corporation *read* county.
 — 57, — 26, for madden *read* maddern.
 — 71, — 26, for were *read* was.
 — — 29, for barges *read* horses.
 — 72, after L. 34, insert "5. Where property is to be rated," and *delete* same words in p. 75.
 — 107, The 5 G. c. 8. l. 1. should be transferred from p. 109, and placed between the first and second paragraphs in p. 107.
 — 127, — 30, for 41 G. 3. *read* 43 G. 3.
 — — 31, for c. 110 *read* c. 124.
 — 166, — 15, for its father can, *read* its father's can.
 — 170, — 39, for and that he, *read* who.
 — 184, — 19, after doth *insert* ~~it~~.
 — 197, — 32, *delete* preceding.
 — 206, — 11, after ~~defining~~ *for* act of law.
 — 252, — 8, for chesnut *read* Chestnut.
 — 272, — 14, for Calyhydon *read* Clayhydon.
 — 303, — 46, for ante *read* ~~post~~.
 — 342, — 4, in margin, for when *read* where.
 — 471, — 29, for 8 T. R. *read* 8 E. R.
 — 516, — 46, for no *read* an.
 — 530, — 31, for justice *read* justices.
 — 571, — 43, for 9 *read* 49.
 — 579, — 3, for now *read* no.
 — 600, — 18, 19, for inconclusive *read* a conclusive.









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